

EXHIBIT O

December 17, 2020

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<p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK -----X MARIO H. CAPOGROSSO, PLAINTIFF, -against- Case No.: 18 CV 2710 (EK) (LB) ALAN GELBSTEIN, in his individual capacity, IDA TRASCHEN, in her individual capacity, DANIELLE CALVO, in her capacity, SADIQ TAHIR, in his individual capacity, PEC GROUP OF NY, INC., DAVID SMART, and DMV COMMISSIONER MARK SCHROEDER, in his official capacity, -----X DEFENDANTS. DATE: December 17, 2020 TIME: 10:16 A.M. DEPOSITION of the Defendant, ALAN GELBSTEIN, taken by the Plaintiff, pursuant to a Notice and to the Federal Rules of Civil Procedure, held VIA ZOOM VIDEOCONFERENCE, before Jamie Newman, a Notary Public of the State of New York.</p>	<p>1 ALAN GELBSTEIN 2 (Whereupon, all 86 exhibits 3 were previously marked by Counsel, 4 Mr. Capogrosso.) 5 ALAN GELBSTEIN, called as a 6 witness, having been first duly affirmed by 7 a Notary Public of the State of New York, 8 was examined and testified as follows: 9 EXAMINATION BY 10 MR. CAPOGROSSO: 11 Q. Please state your name for the 12 record. 13 A. Alan Gelbstein. 14 Q. What is your address? 15 A. 1570 East 7th Street, Brooklyn, 16 New York 11230. 17 Q. Defendant Gelbstein we're here 18 today because I need to take your 19 deposition concerning the action filed 20 against you, myself and several other 21 defendants. 22 THE COURT REPORTER: Wait, 23 wait, you're breaking up Counsel. 24 Counsel, you're breaking up so I 25 can't hear you.</p>
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<p>1 2 APPEARANCES: 3 4 THE LAW FIRM OF MARIO H. CAPOGROSSO 5 PLAINTIFF PRO SE 6 21 Sheldrake Place 7 New Rochelle, New York 10804 8 capogrosso@mhl.com 9 10 OFFICE OF THE NEW YORK STATE 11 ATTORNEY GENERAL 12 Attorneys for the Defendants 13 ALAN GELBSTEIN, in his individual 14 capacity, IDA TRASCHEN, in her individual 15 capacity, DANIELLE CALVO, in her 16 capacity, SADIQ TAHIR, in his individual 17 capacity, PEC GROUP OF NY, INC., DAVID 18 SMART, and DMV COMMISSIONER MARK 19 SCHROEDER, in his official capacity 20 28 Liberty Street, 17th Floor 21 New York, New York 10005 22 BY: JAMES THOMPSON, ESQ. 23 james.thompson@ag.ny.gov 24 25 DMV LEGAL BUREAU Attorneys for the Defendant DMV COMMISSIONER MARK SCHROEDER, in his official capacity 6 Empire State Plaza, Room 522A Albany, New York 12228 BY: BARBARA MONTENA, ESQ. File #: 18CV2710 barbara.montena@dmv.ny.gov * * * *</p>	<p>1 ALAN GELBSTEIN 2 MR. CAPOGROSSO: Can you hear 3 me now? 4 THE COURT REPORTER: You are 5 still breaking up, it's not the best 6 connection. I could hear you, but it 7 goes in and out. 8 MR. CAPOGROSSO: Can you hear 9 me now? 10 THE COURT REPORTER: It goes in 11 and out. 12 MR. CAPOGROSSO: Let me ask a 13 few more questions and see how we do. 14 Is that all right? 15 THE COURT REPORTER: That's 16 fine. 17 Q. These questions are all going 18 to be directed to Defendant, Gelbstein. 19 Were you in the Brooklyn 20 Traffic Violation Bureau on the morning of 21 May 11, 2015? 22 A. At some point, yes. 23 Q. At what point did you arrive at 24 the Brooklyn Traffic Violation Bureau on 25 that day?</p>

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<p>1 ALAN GELBSTEIN</p> <p>2 A. I arrived late, I don't recall</p> <p>3 the time.</p> <p>4 Q. Did you arrive after my removal</p> <p>5 on that day?</p> <p>6 A. Yes.</p> <p>7 Q. What are your normal business</p> <p>8 hours at the Brooklyn TVB?</p> <p>9 A. Business hours I believe are</p> <p>10 8:30 to 4:30.</p> <p>11 Q. So, why were you late that day?</p> <p>12 A. I had some personal things to</p> <p>13 attend to.</p> <p>14 Q. Did you not want to be in the</p> <p>15 building that day for any reason?</p> <p>16 A. No, sir.</p> <p>17 Q. Now, I was removed that day on</p> <p>18 May 11, 2015 under your direction?</p> <p>19 A. I beg your pardon.</p> <p>20 MR. THOMPSON: Objection to the</p> <p>21 form of the question.</p> <p>22 Q. I was removed that day from the</p> <p>23 Brooklyn TVB by your direction, do you</p> <p>24 recall doing that?</p> <p>25 MR. THOMPSON: Objection to the</p>	<p>1 ALAN GELBSTEIN</p> <p>2 THE COURT REPORTER: That's my</p> <p>3 impression, but if I put it on the</p> <p>4 screen you have to wait because I</p> <p>5 can't have my hands off the machine,</p> <p>6 but yeah, if that's what you want me</p> <p>7 to do.</p> <p>8 MR. CAPOGROSSO: Well, I</p> <p>9 already forwarded all the exhibits to</p> <p>10 counsel, attorney Thompson. So,</p> <p>11 attorney Thompson, do you not have</p> <p>12 this exhibit?</p> <p>13 MR. THOMPSON: I do have the</p> <p>14 exhibit, but I think it would be best</p> <p>15 if it were put on the screen so</p> <p>16 everyone can see it.</p> <p>17 MR. CAPOGROSSO: Well, it's</p> <p>18 actually Exhibit 69. Exhibit 69.</p> <p>19 THE COURT REPORTER: Is that</p> <p>20 what you would like me to put up?</p> <p>21 MR. CAPOGROSSO: No, actually,</p> <p>22 it's Exhibit 68. Exhibit 68, let's</p> <p>23 start with that one.</p> <p>24 THE COURT REPORTER: Are these</p> <p>25 already marked, Counsel?</p>
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<p>1 ALAN GELBSTEIN</p> <p>2 form of the question. You can</p> <p>3 answer.</p> <p>4 Q. Do you recall having me removed</p> <p>5 from the Brooklyn TVB on May 11, 2015?</p> <p>6 A. I don't believe that is</p> <p>7 correct.</p> <p>8 Q. You don't recall having me</p> <p>9 removed?</p> <p>10 A. I did not have you removed.</p> <p>11 Q. You did not?</p> <p>12 A. No.</p> <p>13 Q. Let me take you back -- lets</p> <p>14 goes to Exhibit 70. Exhibit 70 that I have</p> <p>15 marked, Plaintiff's Exhibit 70.</p> <p>16 Are you in possession of</p> <p>17 Plaintiff's Exhibit 70?</p> <p>18 A. I am not.</p> <p>19 Q. Is your attorney, Thompson, in</p> <p>20 possession of it?</p> <p>21 MR. THOMPSON: My understanding</p> <p>22 and Madame Court Reporter correct me</p> <p>23 if I'm wrong, you're going to be</p> <p>24 putting the exhibits up on the</p> <p>25 screen; is that correct?</p>	<p>1 ALAN GELBSTEIN</p> <p>2 MR. CAPOGROSSO: It's marked as</p> <p>3 Plaintiff's Exhibit 68. Scroll down</p> <p>4 to the first page.</p> <p>5 (Whereupon, Plaintiff's Exhibit</p> <p>6 68, previously marked, was</p> <p>7 introduced.)</p> <p>8 Q. This is a work violence police</p> <p>9 report, are you familiar with this document</p> <p>10 Exhibit 68?</p> <p>11 A. Yes, I am.</p> <p>12 Q. Are you familiar with the</p> <p>13 person at the top David Smart?</p> <p>14 A. Yes.</p> <p>15 Q. Now, I ask you take a look at</p> <p>16 the second page.</p> <p>17 Right there under additional</p> <p>18 comments and I would like you to take note</p> <p>19 of the third line of that page which reads</p> <p>20 "I was told by Judge Gelbstein to go with</p> <p>21 officers from the police room to tell Mr.</p> <p>22 Capogrosso that he must leave the building</p> <p>23 and give him a legal phone number for any</p> <p>24 further details. I did that and he left</p> <p>25 the building."</p>

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<p>1 ALAN GELBSTEIN</p> <p>2 Now, that is a statement made</p> <p>3 by Danielle Calvo, would you agree to that?</p> <p>4 A. Yes.</p> <p>5 Q. And you're saying that you did</p> <p>6 not order Danielle Calvo to have me</p> <p>7 removed?</p> <p>8 A. I may have, I -- I may have,</p> <p>9 yes.</p> <p>10 Q. So, which one is it, you had me</p> <p>11 removed on that day?</p> <p>12 A. I didn't physically remove you,</p> <p>13 I was, as I recall vaguely, I can't say</p> <p>14 with absolute certainty, that they called</p> <p>15 me telephonically and relayed what occurred</p> <p>16 and at some point I imagine because it says</p> <p>17 so here, I must have told her to have you</p> <p>18 removed and to give you legal counsel's</p> <p>19 phone number.</p> <p>20 Q. Well, who called you on that</p> <p>21 morning?</p> <p>22 A. I believe it was Danielle.</p> <p>23 Q. Danielle.</p> <p>24 And what time did she call you?</p> <p>25 A. I beg your pardon.</p>	<p>1 ALAN GELBSTEIN</p> <p>2 MR. THOMPSON: Objection, asked</p> <p>3 and answered.</p> <p>4 Q. Did you have me removed from</p> <p>5 the Brooklyn TVB based on that videotape,</p> <p>6 did you?</p> <p>7 A. I would have -- assuming that I</p> <p>8 saw it, which I don't recall I did, it</p> <p>9 would have been probably well after the</p> <p>10 fact.</p> <p>11 Q. So, you're having me thrown out</p> <p>12 based on an allegation made by Danielle</p> <p>13 Calvo, is that it?</p> <p>14 MR. THOMPSON: Objection to the</p> <p>15 form of the question.</p> <p>16 Q. Is that correct?</p> <p>17 A. I believe based on what she</p> <p>18 told me, we took action.</p> <p>19 Q. And did you ask Danielle Calvo</p> <p>20 if she viewed the videotape?</p> <p>21 A. Did I ask her if she viewed it?</p> <p>22 Q. Yes.</p> <p>23 A. I did not ask her.</p> <p>24 Q. Did you approach me on the</p> <p>25 afternoon May 8th and said, "I saw what you</p>
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<p>1 ALAN GELBSTEIN</p> <p>2 Q. And what time did she call you?</p> <p>3 A. I don't recall the time.</p> <p>4 Q. Now, there was a videotape of</p> <p>5 this alleged altercation between myself and</p> <p>6 Defendant Smart, did you observe that</p> <p>7 videotape?</p> <p>8 MR. THOMPSON: I'm going to</p> <p>9 object to the form of the question.</p> <p>10 Q. Did you observe the video --</p> <p>11 you still have to -- did you observe the</p> <p>12 videotape of the alleged push?</p> <p>13 MR. THOMPSON: Note my</p> <p>14 objection, you can answer.</p> <p>15 A. I don't recall whether I did or</p> <p>16 not.</p> <p>17 Q. So, you don't recall ever</p> <p>18 observing the videotape?</p> <p>19 A. I don't recall, no.</p> <p>20 Q. Did you keep possession of that</p> <p>21 videotape?</p> <p>22 A. I personally did not.</p> <p>23 Q. At any point in time did you</p> <p>24 view that videotape?</p> <p>25 A. I don't recall.</p>	<p>1 ALAN GELBSTEIN</p> <p>2 wrote about me," concerning a letter I</p> <p>3 wrote to Attorney General Prickett-Morgan</p> <p>4 that I called you complacent, incompetent</p> <p>5 and incapable.</p> <p>6 Do you recall approaching me on</p> <p>7 the afternoon of May 8th?</p> <p>8 A. I do not.</p> <p>9 Q. And did you say to me on the</p> <p>10 afternoon of May 8th, "can't you go</p> <p>11 practice somewhere else"?</p> <p>12 A. I don't remember saying that to</p> <p>13 you at all.</p> <p>14 Q. Were you predisposed to having</p> <p>15 me removed from the Brooklyn TVB?</p> <p>16 A. I was not.</p> <p>17 Q. Were you conveniently not</p> <p>18 present at the Brooklyn TVB on the morning</p> <p>19 of May 11th; sir, did you not happen to</p> <p>20 view the videotape or the incident between</p> <p>21 myself and Defendant Smart?</p> <p>22 MR. THOMPSON: Objection.</p> <p>23 A. I'm not sure I understand the</p> <p>24 question.</p> <p>25 Q. Were you purposefully not</p>

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<p style="text-align: right;">Page 13</p> <p>1 ALAN GELBSTEIN</p> <p>2 available at the Brooklyn TVB on the</p> <p>3 morning of May 11, 2015?</p> <p>4 MR. THOMPSON: Objection.</p> <p>5 (Whereupon, there was</p> <p>6 cross-talk, so Counsel re-asked the</p> <p>7 question.)</p> <p>8 Q. Were you purposefully not</p> <p>9 available on the morning of May 11, 2015?</p> <p>10 A. No.</p> <p>11 Q. Did you tell Defendant Smart to</p> <p>12 approach me on the morning of May 11, 2015</p> <p>13 and create an incident between myself and</p> <p>14 him?</p> <p>15 MR. THOMPSON: Objection,</p> <p>16 compound. You can answer.</p> <p>17 THE WITNESS: I didn't hear</p> <p>18 you, Counsel?</p> <p>19 Q. Did you tell?</p> <p>20 THE WITNESS: I heard you, I</p> <p>21 didn't hear Mr. Thompson said</p> <p>22 something.</p> <p>23 MR. THOMPSON: Objection,</p> <p>24 compound, but you can answer the</p> <p>25 question.</p>	<p style="text-align: right;">Page 15</p> <p>1 ALAN GELBSTEIN</p> <p>2 can answer.</p> <p>3 A. I don't know who viewed it.</p> <p>4 Q. Did Ida Traschen view the</p> <p>5 videotape before she had me removed --</p> <p>6 before she told me that I was not allowed</p> <p>7 to practice law in the Brooklyn TVB or any</p> <p>8 New York TVB?</p> <p>9 MR. THOMPSON: Objection to the</p> <p>10 form.</p> <p>11 A. I don't know if Ida Traschen</p> <p>12 observed it.</p> <p>13 Q. Did you have a conversation</p> <p>14 with Ida Traschen on the morning of May 11,</p> <p>15 2015?</p> <p>16 A. I do not recall with certainty</p> <p>17 whether I did or not.</p> <p>18 Q. Ida Traschen did not call you</p> <p>19 and question you concerning my removal on</p> <p>20 the morning of May 11, 2015?</p> <p>21 MR. THOMPSON: I'm going to</p> <p>22 object on the basis of</p> <p>23 attorney/client privilege and work</p> <p>24 product, the contents of any</p> <p>25 conversation between Judge Gelbstein</p>
<p style="text-align: right;">Page 14</p> <p>1 ALAN GELBSTEIN</p> <p>2 A. Repeat the question, please.</p> <p>3 Q. Did you tell Defendant Smart to</p> <p>4 approach me on the morning of May 11, 2015?</p> <p>5 A. No.</p> <p>6 Q. Do you have authority over the</p> <p>7 actions of Defendant Smart at the Brooklyn</p> <p>8 TVB?</p> <p>9 MR. THOMPSON: Objection to the</p> <p>10 form of question, you can answer.</p> <p>11 A. I do.</p> <p>12 Q. You do?</p> <p>13 A. Yes.</p> <p>14 Q. Who viewed the evidence on the</p> <p>15 morning of May 11, 2015 of this alleged</p> <p>16 push, other than Danielle Calvo?</p> <p>17 MR. THOMPSON: I'm having a</p> <p>18 hard time hearing what you're saying,</p> <p>19 Mr. Capogrosso.</p> <p>20 Q. Who viewed the evidence of this</p> <p>21 alleged push, who viewed the videotape on</p> <p>22 the morning of May 11, 2015, other than</p> <p>23 Danielle Calvo?</p> <p>24 MR. THOMPSON: Objection,</p> <p>25 assumes facts not in evidence. You</p>	<p style="text-align: right;">Page 16</p> <p>1 ALAN GELBSTEIN</p> <p>2 and Ida Traschen who is counsel of</p> <p>3 DMV that is a legal conversation.</p> <p>4 And so, Judge Gelbstein I'll</p> <p>5 instruct you not to answer any</p> <p>6 question what you said to Ida and</p> <p>7 what Ida said to you.</p> <p>8 Q. You still have to answer the</p> <p>9 question, did you have a conversation with</p> <p>10 Ida Traschen?</p> <p>11 A. I don't recall.</p> <p>12 Q. Were you in possession of a</p> <p>13 letter that I wrote on March 20, 2015, to</p> <p>14 Attorney General Prickett-Morgan?</p> <p>15 A. I believe I was furnished a</p> <p>16 copy of that letter.</p> <p>17 Q. When were you furnished a copy</p> <p>18 of that letter?</p> <p>19 A. I don't know the date, it was</p> <p>20 part of an e-mail.</p> <p>21 Q. Was it prior to the event, the</p> <p>22 alleged push on May 11, 2015?</p> <p>23 A. I couldn't tell you, I don't</p> <p>24 know.</p> <p>25 THE COURT REPORTER: What is</p>

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<p style="text-align: right;">Page 17</p> <p>1 ALAN GELBSTEIN</p> <p>2 Cricket's last name?</p> <p>3 MR. CAPOGROSSO:</p> <p>4 Pricket-Morgan, M-O-R-G-A-N. Pricket</p> <p>5 is also her last name.</p> <p>6 MR. THOMPSON: It's hyphenated,</p> <p>7 Pricket-Morgan.</p> <p>8 Q. You don't recall when you came</p> <p>9 in possession of a letter of May 11, 2015?</p> <p>10 A. Not at this time. It's been</p> <p>11 five years and I did not review it, I</p> <p>12 couldn't tell you.</p> <p>13 Q. Was that letter forwarded to</p> <p>14 you directly by Attorney General</p> <p>15 Pricket-Morgan?</p> <p>16 A. No.</p> <p>17 Q. Did you address any of the</p> <p>18 complaints that I made in that letter of</p> <p>19 March 20, 2015?</p> <p>20 A. I don't remember with</p> <p>21 specificity what the complaints were.</p> <p>22 Q. Well, I will get that letter</p> <p>23 for you now, but did you take any action</p> <p>24 with respect to that letter?</p> <p>25 A. Again, if I don't know -- if I</p>	<p style="text-align: right;">Page 19</p> <p>1 ALAN GELBSTEIN</p> <p>2 MR. CAPOGROSSO: I'll withdraw</p> <p>3 that question.</p> <p>4 Q. Now, I made certain complaints</p> <p>5 against Defendant Smart which I brought to</p> <p>6 your attention in this letter. I ask you</p> <p>7 to look down that page.</p> <p>8 MR. CAPOGROSSO: If you can</p> <p>9 scroll down the page, please.</p> <p>10 THE COURT REPORTER: Sure.</p> <p>11 Q. Now, Item Number 1, I'll draw</p> <p>12 your attention to Item Number 1, I state</p> <p>13 that your security guard David Sparks to me</p> <p>14 repeated times "to go fuck myself."</p> <p>15 Do you see that statement?</p> <p>16 A. I do.</p> <p>17 Q. You did.</p> <p>18 Did you take any action in</p> <p>19 response to that statement, did you rectify</p> <p>20 it?</p> <p>21 A. Your statement does not seem to</p> <p>22 be addressed to me for me to take action</p> <p>23 upon David Sparks.</p> <p>24 Q. Did I ever make a complaint to</p> <p>25 your office concerning that type of</p>
<p style="text-align: right;">Page 18</p> <p>1 ALAN GELBSTEIN</p> <p>2 don't recall the contents, I couldn't tell</p> <p>3 you what my reaction would be.</p> <p>4 Q. Fine, let me get you the</p> <p>5 letter. Let's go to Exhibit 15.</p> <p>6 (Whereupon, Plaintiff's Exhibit</p> <p>7 15, previously marked, was</p> <p>8 introduced.)</p> <p>9 Q. Defendant Gelbstein, do you</p> <p>10 recall receiving this letter?</p> <p>11 A. Yes, I saw this letter.</p> <p>12 Q. When did you see it?</p> <p>13 A. I don't recall the first time I</p> <p>14 saw it. As I said, it was attached to an</p> <p>15 e-mail I received.</p> <p>16 Q. And it's dated March 20th; is</p> <p>17 that correct?</p> <p>18 A. Yes.</p> <p>19 Q. 2015?</p> <p>20 A. Yes.</p> <p>21 Q. The incident between myself and</p> <p>22 Defendant Smart, this alleged push occurred</p> <p>23 on May 11th, am I right?</p> <p>24 A. I don't know what you're</p> <p>25 looking at. I beg your pardon.</p>	<p style="text-align: right;">Page 20</p> <p>1 ALAN GELBSTEIN</p> <p>2 behavior?</p> <p>3 A. You have come in to my office</p> <p>4 to complain about security guard David</p> <p>5 Sparks, yes.</p> <p>6 Q. And what did you do in response</p> <p>7 to those complaints?</p> <p>8 A. On each -- well, I don't know</p> <p>9 how many times you came in. I remember you</p> <p>10 coming in, I called David Sparks in and I</p> <p>11 told him that if he said anything</p> <p>12 derogatory or had an altercation with you,</p> <p>13 he has to keep far away from you. Whenever</p> <p>14 he sees you, he should go in the opposite</p> <p>15 direction.</p> <p>16 Q. But, he didn't obey that order,</p> <p>17 did he?</p> <p>18 A. I don't know that to be</p> <p>19 correct, sir.</p> <p>20 Q. Well, he did approach me on the</p> <p>21 morning of May 11, 2015; right?</p> <p>22 A. I don't know that to be the</p> <p>23 case, sir.</p> <p>24 Q. The police reports -- you</p> <p>25 didn't -- I mean, after Defendant Smart</p>

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<p style="text-align: right;">Page 21</p> <p>1 ALAN GELBSTEIN 2 approached me on May 11, 2015, you didn't 3 view that videotape at any point 4 thereafter? 5 MR. THOMPSON: Objection to the 6 form of the question. 7 THE WITNESS: Answer? 8 MR. THOMPSON: You may answer. 9 Q. After he approached me on 10 May 11th -- 11 THE COURT REPORTER: Wait, the 12 connection is not good. This is not 13 a good connection. 14 MR. CAPOGROSSO: Give me one 15 minute, maybe if I move my laptop to 16 a different location maybe I can get 17 a better connection. Can you give me 18 one minute to do that? 19 THE COURT REPORTER: Sure. 20 MR. CAPOGROSSO: Can you hear 21 me better, Ma'am? 22 THE COURT REPORTER: Yes, I 23 can. The witness was trying to 24 answer, but the connection got all 25 messed up.</p>	<p style="text-align: right;">Page 23</p> <p>1 ALAN GELBSTEIN 2 Defendant Smart and telling me "a spade is 3 a spade"? 4 A. Are you reading something else 5 in the letter now? 6 Q. Yes, the second page down. 7 A. I see the paragraph. 8 Q. Do you recall laughing and 9 giggling at me and telling me "a spade is a 10 spade" when I complained about Defendant 11 Smart's action? 12 A. I didn't hear you. Can you 13 repeat the question? 14 Q. Do you recall laughing and 15 giggling at me and telling me "a spade is a 16 spade" when I complained of Defendant's 17 Smart's actions? 18 A. No. 19 Q. Many Affidavits were written by 20 your clerks, by attorneys, by a judge 21 against me and they were all presented to 22 me for the first time in Defendant's Motion 23 to Dismiss. 24 Are you familiar with those 25 complaints and Affidavits of misconduct?</p>
<p style="text-align: right;">Page 22</p> <p>1 ALAN GELBSTEIN 2 A. The answer is, I don't recall 3 ever seeing the tape. 4 Q. All right. 5 Directing your attention to the 6 that third question that I made complaints 7 to the office that your security guard 8 stared and glared at me and would get in my 9 face and say FU. 10 Do you recall that? 11 A. I missed the question, say it 12 again, please. 13 Q. I made a complaint that your 14 security guard Defendant Smart would get in 15 my face and stare and glare at me. 16 Do you recall me making a 17 complaint to your office concerning that? 18 A. I just read Number 3 and what 19 is your question with regard to Number 3? 20 Q. Do you recall me making that 21 complaint to your office? 22 A. No, I do not. 23 Q. At one point in time did you 24 laugh and giggle at me when I was telling 25 you about these complaints concerning</p>	<p style="text-align: right;">Page 24</p> <p>1 ALAN GELBSTEIN 2 MR. THOMPSON: Objection to 3 form, you can answer. 4 A. I don't know which ones 5 specifically you are referring to, but yes, 6 I did receive complaints. 7 Q. All right, fine. 8 Did you ever give me an 9 opportunity to respond to any of those 10 complaints? 11 A. I'm not sure if -- I need 12 clarification on your question. If the 13 question is if there were specificity in 14 the particular complaint, is it your 15 question did I ask you -- 16 Q. I'll rephrase the question. 17 Did you ever approach me with a 18 complaint and ask me to respond to it? 19 A. Yes. 20 Q. You presented me with a written 21 complaint and asked me to respond? 22 A. No. I never gave you a written 23 complaint to respond to. 24 Q. You did not? 25 A. No.</p>

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<p style="text-align: right;">Page 25</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. So, I had no opportunity to</p> <p>3 respond to any of these complaints that</p> <p>4 either your clerks were making or attorneys</p> <p>5 were making or even a judge made, you gave</p> <p>6 me no opportunity to respond before having</p> <p>7 me removed; is that fair?</p> <p>8 MR. THOMPSON: Objection to</p> <p>9 form.</p> <p>10 A. No, it's not fair.</p> <p>11 Q. At what point in time did you</p> <p>12 give me an opportunity to respond?</p> <p>13 A. As complaints came in over a</p> <p>14 period of time, whenever there was a</p> <p>15 complaint lodged and it was more serious,</p> <p>16 there were complaints I thought pay, but it</p> <p>17 was a more serious, I would call you in and</p> <p>18 I would tell you other complaints and I</p> <p>19 would tell you to cease and desist and you</p> <p>20 would promise that you would.</p> <p>21 And that was the end of the</p> <p>22 discussion with any particular complaint.</p> <p>23 Q. Well, tell me which complaint</p> <p>24 you did that because I don't recall it,</p> <p>25 tell me, tell me the exact complaint?</p>	<p style="text-align: right;">Page 27</p> <p>1 ALAN GELBSTEIN</p> <p>2 Brooklyn TVB?</p> <p>3 A. Could you repeat the question?</p> <p>4 Q. Did you use these complaints to</p> <p>5 have me removed from the Brooklyn TVB?</p> <p>6 MR. THOMPSON: I object to the</p> <p>7 form, you can answer.</p> <p>8 A. From the cumulative complaints,</p> <p>9 no one complaint in and of itself was the</p> <p>10 deciding factor. It was a cumulation of</p> <p>11 complaints over a period of time.</p> <p>12 Q. And you just accepted all those</p> <p>13 complaints as true without asking for my</p> <p>14 affidavit in response; is that a fair</p> <p>15 statement?</p> <p>16 A. I did not ask for an affidavit</p> <p>17 in response.</p> <p>18 Q. Well, let me draw your</p> <p>19 attention to a couple of those complaints</p> <p>20 that you said you investigated the</p> <p>21 truthfulness and voracity of if I may for</p> <p>22 which you had me removed from the Brooklyn</p> <p>23 TVB.</p> <p>24 I'll ask you to take a look at</p> <p>25 specifically one that was made by your</p>
<p style="text-align: right;">Page 26</p> <p>1 ALAN GELBSTEIN</p> <p>2 A. At this time I don't recall</p> <p>3 specificity, but as I said before, whenever</p> <p>4 I felt a complaint and not a minor</p> <p>5 complaint, a serious complaint required my</p> <p>6 intervention, I called you in and we had a</p> <p>7 discussion in my office.</p> <p>8 Q. But, you don't recall the date</p> <p>9 that you called me in or the complaint that</p> <p>10 you asked me to address?</p> <p>11 A. Right.</p> <p>12 Q. And you never asked me for a</p> <p>13 written reply to any complaint; is that</p> <p>14 fair?</p> <p>15 A. That's fair.</p> <p>16 Q. Did you ever investigate the</p> <p>17 voracity or truthfulness of any of these</p> <p>18 complaints?</p> <p>19 A. I did.</p> <p>20 Q. Or did you just accept them as</p> <p>21 truthful?</p> <p>22 A. I investigated to the best of</p> <p>23 my recollection every serious complaint.</p> <p>24 Q. And you used these complaints</p> <p>25 of misconduct to have me removed from the</p>	<p style="text-align: right;">Page 28</p> <p>1 ALAN GELBSTEIN</p> <p>2 chief clerk, your chief clerk which is</p> <p>3 Exhibit -- let's see -- 84? 84. Can we go</p> <p>4 to Exhibit 85, I'm sorry, 85.</p> <p>5 (Whereupon, Plaintiff's Exhibit</p> <p>6 85, previously marked, was</p> <p>7 introduced.)</p> <p>8 Q. Are you familiar with Melanie</p> <p>9 Levine?</p> <p>10 A. Yes.</p> <p>11 Q. Who is Melanie, M-E-L-A-N-I-E,</p> <p>12 Levine?</p> <p>13 A. She, at the time, was a</p> <p>14 supervisor in the clerical office.</p> <p>15 Q. So, she was a supervisor of</p> <p>16 your clerks, am I right in saying that?</p> <p>17 A. She was a supervisor of some of</p> <p>18 the clerks. She was not the head clerk,</p> <p>19 she was a principal clerk.</p> <p>20 MR. CAPOGROSSO: Can you please</p> <p>21 scroll down, Ma'am, to the next page.</p> <p>22 (Whereupon, the Court Reporter</p> <p>23 complied.)</p> <p>24 Q. I'll direct you to the first</p> <p>25 paragraph on the next page, right there,</p>

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<p style="text-align: right;">Page 29</p> <p>1 ALAN GELBSTEIN</p> <p>2 thank you. Now, I'll direct you to first</p> <p>3 paragraph where your clerk of supervisors</p> <p>4 states, "attorney Capogrosso represented</p> <p>5 Mr. Perez at trial for three violations on</p> <p>6 January 21, 2015."</p> <p>7 MR. THOMPSON: I think he's</p> <p>8 referring to the previous page,</p> <p>9 Page 3.</p> <p>10 THE COURT REPORTER: That's</p> <p>11 what I thought, but his connection is</p> <p>12 slower. This, this is Page 3, so</p> <p>13 give it a second to catch up. You</p> <p>14 want Page 4, the handwritten portion.</p> <p>15 MR. CAPOGROSSO: The one before</p> <p>16 that, Ma'am. Further up Ma'am --</p> <p>17 right there.</p> <p>18 Q. Did you investigate that</p> <p>19 complaint, Defendant Gelbstein?</p> <p>20 A. I don't recall if I</p> <p>21 specifically investigated this complaint.</p> <p>22 Q. So. You don't know the</p> <p>23 voracity or truthfulness of that complaint;</p> <p>24 is that a fair statement?</p> <p>25 A. I don't recall at this time.</p>	<p style="text-align: right;">Page 31</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. Well, let me tell you what</p> <p>3 happened with this complaint, Mr. Perez did</p> <p>4 not hire me to represent him on three</p> <p>5 violations, he did not. He hired me on</p> <p>6 appeal the day after he lost and was</p> <p>7 suspended in a courthouse by one of your</p> <p>8 judges on these violations, that's what</p> <p>9 happened.</p> <p>10 And he hired me on the appeal</p> <p>11 and I took the appeal and then he came back</p> <p>12 the next day and what he told me was that</p> <p>13 his license got suspended and revoked. And</p> <p>14 he said to me I want my --</p> <p>15 MR. THOMPSON: Note my</p> <p>16 objection.</p> <p>17 Q. -- Mr. Perez did not hire me on</p> <p>18 those violations and you never investigated</p> <p>19 that now, did you Mr. Gelbstein?</p> <p>20 MR. THOMPSON: Note my</p> <p>21 objection, you can answer.</p> <p>22 A. I don't recall with specificity</p> <p>23 what I did at the time. I'm aware of the</p> <p>24 complaint, I don't remember if I spoke to</p> <p>25 him or not. I don't recall.</p>
<p style="text-align: right;">Page 30</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. But, you used this as one of</p> <p>3 the complaints of misconduct to have me</p> <p>4 removed; is that right?</p> <p>5 A. This is one of many, yes.</p> <p>6 Q. And you know I never</p> <p>7 represented Mr. Perez on January 11, 2015,</p> <p>8 you know that; right?</p> <p>9 A. I do not.</p> <p>10 Q. Well, she's making a false</p> <p>11 statement. You could have investigated it,</p> <p>12 but you didn't investigate it now, did you?</p> <p>13 MR. THOMPSON: Objection to the</p> <p>14 form of the question. You can</p> <p>15 answer.</p> <p>16 A. I don't recall the particular</p> <p>17 complaint now with specificity and what</p> <p>18 actions I took with regard to this. I</p> <p>19 don't recall whether I spoke to Paul Perez</p> <p>20 or not. I may have, I don't recall.</p> <p>21 Q. Did you ever talk to me about</p> <p>22 this complaint?</p> <p>23 A. Again, I don't remember with</p> <p>24 specificity with this particular complaint</p> <p>25 whether I spoke to you on it or not.</p>	<p style="text-align: right;">Page 32</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. But, you never took my</p> <p>3 affidavit in response; right?</p> <p>4 MR. THOMPSON: Objection, asked</p> <p>5 and answered, you can respond.</p> <p>6 Q. Now, you know what happened</p> <p>7 that day Mr. Perez approached me, after I</p> <p>8 gave him his money back and he told me he</p> <p>9 was going to cut me with a knife and the</p> <p>10 slash the tires of my car, you understand</p> <p>11 that, that's what he said to me?</p> <p>12 MR. THOMPSON: Objection,</p> <p>13 assumes fact not in evidence.</p> <p>14 A. I wasn't there when you had the</p> <p>15 conversation, I don't know what he said to</p> <p>16 nor do I know what you said to him.</p> <p>17 Q. But, you never took my</p> <p>18 statement in reference to that complaint</p> <p>19 now did you?</p> <p>20 A. Again, I don't recall the</p> <p>21 specific conversation we had with regard to</p> <p>22 it, if we didn't have a conversation.</p> <p>23 Q. You never had a conversation</p> <p>24 with me concerning this complaint because</p> <p>25 there's no affidavit attached to this</p>

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<p style="text-align: right;">Page 33</p> <p>1 ALAN GELBSTEIN</p> <p>2 complaint concerning my statement, now is</p> <p>3 there?</p> <p>4 MR. THOMPSON: Objection,</p> <p>5 argumentative. You can answer.</p> <p>6 A. I don't know whether or not</p> <p>7 there was something attached now to the</p> <p>8 filings of the legal papers.</p> <p>9 Q. Did you take an affidavit in</p> <p>10 response to that complaint?</p> <p>11 A. Did I take an affidavit from</p> <p>12 you?</p> <p>13 Q. From me.</p> <p>14 A. I don't believe you offered me</p> <p>15 an affidavit.</p> <p>16 Q. Did you ask me for one?</p> <p>17 A. I don't believe I did.</p> <p>18 Q. Now, on that day in question</p> <p>19 when Mr. Perez told me was going to cut me</p> <p>20 with a knife and then slash the tires of my</p> <p>21 car, your Defendant Smart was never there,</p> <p>22 your security guard was never there to take</p> <p>23 any action.</p> <p>24 Is that a fair statement?</p> <p>25 MR. THOMPSON: Objection to</p>	<p style="text-align: right;">Page 35</p> <p>1 ALAN GELBSTEIN</p> <p>2 (Whereupon, Plaintiff's Exhibit</p> <p>3 81, previously marked, was</p> <p>4 introduced.)</p> <p>5 Q. I'm going to direct you to that</p> <p>6 first paragraph. There's a lot of things</p> <p>7 that I could talk to you about, but time is</p> <p>8 short.</p> <p>9 I'll direct you to that first</p> <p>10 paragraph and it says in part -- and this</p> <p>11 is a letter written by Bushra Vahdat who</p> <p>12 happens to be whom, do you know who Bushra</p> <p>13 Vahdat is?</p> <p>14 A. I do.</p> <p>15 Q. Who is it Bushra Vahdat?</p> <p>16 A. She was my immediate</p> <p>17 supervisor.</p> <p>18 Q. Now, she made a complaint --</p> <p>19 she made an affidavit concerning my</p> <p>20 behavior.</p> <p>21 Did you have an opportunity to</p> <p>22 look at this complaint?</p> <p>23 A. I'm trying to read it now. Is</p> <p>24 there anything specific, it seems to be --</p> <p>25 should I zoom in on a particular paragraph?</p>
<p style="text-align: right;">Page 34</p> <p>1 ALAN GELBSTEIN</p> <p>2 form.</p> <p>3 A. I wouldn't know.</p> <p>4 Q. Do you know if the police came</p> <p>5 to investigate that complaint?</p> <p>6 A. I do not know.</p> <p>7 Q. And yet, at one point in time,</p> <p>8 you told me and I believe you told all the</p> <p>9 other attorneys, that if you have an unruly</p> <p>10 client you're supposed to speak to them</p> <p>11 outside the courthouse.</p> <p>12 Did you not tell us all that?</p> <p>13 A. Let me see if I understand, are</p> <p>14 you saying that -- is the question, did I</p> <p>15 speak to all the attorneys that if you have</p> <p>16 an unruly client you should to talk to them</p> <p>17 outside?</p> <p>18 Q. Yes, outside the courtroom, did</p> <p>19 you not tell me that at one point in time?</p> <p>20 A. It sounds like something I</p> <p>21 might have said.</p> <p>22 Q. All right, fine.</p> <p>23 Let me draw your attention to</p> <p>24 another exhibit which I have to ask,</p> <p>25 Exhibit 81. Can we go to Exhibit 81?</p>	<p style="text-align: right;">Page 36</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. I'll address your attention to</p> <p>3 that first paragraph that begins "when I</p> <p>4 was first appointed to the position of</p> <p>5 supervising ALJ."</p> <p>6 Are you there?</p> <p>7 A. Yes.</p> <p>8 Q. Fine.</p> <p>9 She indicates on the fourth</p> <p>10 line down, she indicates "I verbally abused</p> <p>11 the clerks on many occasions and followed a</p> <p>12 clerk with his car and stopped the car from</p> <p>13 moving. He then asked the clerk to get of</p> <p>14 the car and fight it out with him."</p> <p>15 Now, did you investigate the</p> <p>16 truth and veracity of that statement?</p> <p>17 A. I don't recall.</p> <p>18 Q. You don't?</p> <p>19 A. No.</p> <p>20 Q. Do you know who that clerk</p> <p>21 might have been that she's talking about?</p> <p>22 A. I do not.</p> <p>23 Q. Could it have been a George Han</p> <p>24 that was a clerk at your court?</p> <p>25 A. Could have been.</p>

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<p style="text-align: right;">Page 37</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. Okay, fine. Can we go to</p> <p>3 Exhibit 82?</p> <p>4 (Whereupon, Plaintiff's Exhibit</p> <p>5 82, previously marked, was</p> <p>6 introduced.)</p> <p>7 Q. Do you recognize George Han's</p> <p>8 name there?</p> <p>9 A. I see the name George Han.</p> <p>10 Q. It indicates here a little bit</p> <p>11 further down if I could. It indicates on</p> <p>12 that second paragraph down I'm going to</p> <p>13 read it to you, "George -- C was waiting at</p> <p>14 the entrance at the parking lot in his car.</p> <p>15 He was in his car, it says. George stopped</p> <p>16 behind him."</p> <p>17 A. I'm not following -- from --</p> <p>18 the paragraph starting "Wednesday he</p> <p>19 paragraph C approached G, is that where you</p> <p>20 are reading?</p> <p>21 Q. I'm talking about the last</p> <p>22 paragraph on that page, "he approached G</p> <p>23 again and said" -- do you see that?</p> <p>24 A. I see that.</p> <p>25 Q. Fine.</p>	<p style="text-align: right;">Page 39</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. Now, Bushra Vahdat says I got</p> <p>3 in a car and I followed this clerk, right,</p> <p>4 in the last exhibit that we just looked at;</p> <p>5 is that correct?</p> <p>6 A. What are you reading?</p> <p>7 Q. The last exhibit "that he</p> <p>8 followed clerk with his car and stopped the</p> <p>9 clerk's car from moving."</p> <p>10 Do you remember that, the last</p> <p>11 exhibit, Exhibit 81?</p> <p>12 A. Is it in the same paragraph</p> <p>13 that I just read?</p> <p>14 Q. No, it's in the previous</p> <p>15 exhibit, Exhibit 81.</p> <p>16 A. I honestly don't recall. I</p> <p>17 don't know, I'll take your word for it,</p> <p>18 it's there, I don't know.</p> <p>19 Q. Fine. That's what Bushra</p> <p>20 Vahdat said concerning that incident.</p> <p>21 That Mr. Capogrosso followed</p> <p>22 him in his car and stopped the clerk's car</p> <p>23 from moving.</p> <p>24 Is Bushra Vahdat lying there?</p> <p>25 A. I have no way of knowing.</p>
<p style="text-align: right;">Page 38</p> <p>1 ALAN GELBSTEIN</p> <p>2 And George says, "that</p> <p>3 Capogrosso was at the entrance of the</p> <p>4 parking lot in his car."</p> <p>5 Do you see that written?</p> <p>6 A. "Mr. C was waiting at the</p> <p>7 entrance of the parking lot in his car," I</p> <p>8 see that, yes.</p> <p>9 Q. Fine.</p> <p>10 "In his car and George stopped</p> <p>11 him -- George stopped behind him."</p> <p>12 Do you see that statement?</p> <p>13 A. I do.</p> <p>14 Q. And then both got out of the</p> <p>15 car.</p> <p>16 Do you see that statement?</p> <p>17 A. I do.</p> <p>18 Q. Let me ask you a question, as</p> <p>19 an attorney, after a full day of work in</p> <p>20 your courthouse and you know house busy it</p> <p>21 gets down there, am I allowed as an</p> <p>22 attorney to sit in my car and make phone</p> <p>23 calls?</p> <p>24 A. I imagine anybody could sit in</p> <p>25 a car and make phone calls.</p>	<p style="text-align: right;">Page 40</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. Was that a true and accurate</p> <p>3 affidavit as to what happened?</p> <p>4 A. I didn't write the affidavit, I</p> <p>5 don't know -- I wasn't there when, you</p> <p>6 know, when the incident occurred.</p> <p>7 Q. Did you investigate the</p> <p>8 voracity and truthfulness of that</p> <p>9 affidavit?</p> <p>10 A. I don't question my supervisor.</p> <p>11 She did independent work, she did</p> <p>12 independent work.</p> <p>13 Q. So, you just accepted that as</p> <p>14 truthful, that complaint is just accepted</p> <p>15 by you as truthful; is that correct?</p> <p>16 MR. THOMPSON: Objection to the</p> <p>17 form of the connection. You can</p> <p>18 answer.</p> <p>19 A. I accepted it for what it was</p> <p>20 worth.</p> <p>21 Q. But, you didn't know whether it</p> <p>22 was truthful or not, and you gave me no</p> <p>23 opportunity to respond; is that true?</p> <p>24 A. I didn't ask you anything that</p> <p>25 I recall. I may have, I don't recall</p>

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<p style="text-align: right;">Page 41</p> <p>1 ALAN GELBSTEIN</p> <p>2 whether I asked you anything about it or</p> <p>3 not.</p> <p>4 Q. And you received nothing in</p> <p>5 terms of an affidavit from me to your</p> <p>6 office in response to that, now did you?</p> <p>7 A. I don't believe I received an</p> <p>8 affidavit from you in response.</p> <p>9 Q. You have all the affidavits</p> <p>10 that were filed in your office, do you not?</p> <p>11 A. I don't know if I received all</p> <p>12 of the affidavits, I don't know.</p> <p>13 Q. Let's go to one more if I</p> <p>14 could. I have to question you on this one,</p> <p>15 I really do. I have to question you on</p> <p>16 this one. Give me one moment. Exhibit 73.</p> <p>17 (Whereupon, Plaintiff's Exhibit</p> <p>18 73, previously marked, was</p> <p>19 introduced.)</p> <p>20 Q. Are you familiar with that</p> <p>21 document, Defendant Gelbstein?</p> <p>22 A. I see it's an Affirmation that</p> <p>23 I made.</p> <p>24 Q. With respect to my conduct at</p> <p>25 the Brooklyn TVB; am I right?</p>	<p style="text-align: right;">Page 43</p> <p>1 ALAN GELBSTEIN</p> <p>2 to my office that I could respond to?</p> <p>3 A. Nothing in writing.</p> <p>4 Q. Did you ever spell out what the</p> <p>5 threatening behavior was so I could respond</p> <p>6 to it?</p> <p>7 A. Whenever I called you in, it</p> <p>8 was with a specific occasion and we spoke</p> <p>9 about that particular occasion.</p> <p>10 Q. Can you give me one occasion</p> <p>11 that you spoke to me about, just one?</p> <p>12 A. I don't recall at this time any</p> <p>13 specific one.</p> <p>14 Q. But, you had me removed based</p> <p>15 on these alleged threatening behavior; am I</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. So, you can't recall just one</p> <p>19 instance?</p> <p>20 A. No, not at this time. There</p> <p>21 were so many, I don't know, I just can't</p> <p>22 tell you with specificity.</p> <p>23 MR. CAPOGROSSO: I'll question</p> <p>24 you more at trial, it's okay. I</p> <p>25 don't have enough time right now,</p>
<p style="text-align: right;">Page 42</p> <p>1 ALAN GELBSTEIN</p> <p>2 A. I assume -- not reading it, but</p> <p>3 I assume if you tell me that's what it is,</p> <p>4 that's what it is.</p> <p>5 Q. It's your signature at the</p> <p>6 bottom of that page, is it not?</p> <p>7 A. I don't see the signature.</p> <p>8 Q. Can we please go down to the</p> <p>9 end of that page, Ma'am?</p> <p>10 (Whereupon, the Court Reporter</p> <p>11 scrolled to the bottom of the page.)</p> <p>12 Q. Do you see your signature at</p> <p>13 the bottom of that page?</p> <p>14 A. Yes, that's my signature.</p> <p>15 Q. So, that is your Affirmation?</p> <p>16 A. Yes.</p> <p>17 Q. I'm going to direct your</p> <p>18 attention to Paragraph 2.</p> <p>19 "On numerous occasions I</p> <p>20 personally warned petitioner of threatening</p> <p>21 behavior."</p> <p>22 Can you tell me the dates that</p> <p>23 you warned me?</p> <p>24 A. No.</p> <p>25 Q. Did you put anything in writing</p>	<p style="text-align: right;">Page 44</p> <p>1 ALAN GELBSTEIN</p> <p>2 I'll question you at trial.</p> <p>3 MR. THOMPSON: Objection.</p> <p>4 MR. CAPOGROSSO: That's fine,</p> <p>5 I'll withdraw it.</p> <p>6 Q. I direct your attention to Item</p> <p>7 Number 6, Paragraph Number 6 because I have</p> <p>8 to question you on this one.</p> <p>9 You indicate in Paragraph 6,</p> <p>10 "Petitioner often uses anti-Semitic</p> <p>11 languages when referring or speaking to</p> <p>12 Jewish attorneys."</p> <p>13 Can you tell me when I did</p> <p>14 this?</p> <p>15 A. I don't recall the dates.</p> <p>16 Q. You don't?</p> <p>17 A. No.</p> <p>18 Q. But, you're using this an</p> <p>19 allegation to get me removed; right?</p> <p>20 A. As one of the allegations.</p> <p>21 Q. All right.</p> <p>22 This one you got to remember</p> <p>23 Defendant Gelbstein, you also state,</p> <p>24 "Petitioner called me a beanie wearing</p> <p>25 kyke."</p>

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<p style="text-align: right;">Page 45</p> <p>1 ALAN GELBSTEIN</p> <p>2 When did I say that?</p> <p>3 A. I don't remember the date, but</p> <p>4 I will tell you exactly where you told me</p> <p>5 because I was a little shocked. We were</p> <p>6 outside my office to the right about, I</p> <p>7 would say, maybe 12 feet from my door,</p> <p>8 about midway in the hallway between the</p> <p>9 clerical office door building and let's say</p> <p>10 my office.</p> <p>11 Just midway about 12 feet</p> <p>12 towards the beach. I was facing you and</p> <p>13 you were facing me and it was part of a</p> <p>14 conversation. I don't remember the rest of</p> <p>15 the conversation, but that particular part,</p> <p>16 you know, kind of seared into my brain.</p> <p>17 Q. Seared into you and you didn't</p> <p>18 write it down, did you?</p> <p>19 A. No, sir.</p> <p>20 Q. You didn't do -- you didn't</p> <p>21 formalize this in any written document or</p> <p>22 any written complaint?</p> <p>23 A. Not that I recall.</p> <p>24 Q. And why didn't you?</p> <p>25 A. I didn't think it was</p>	<p style="text-align: right;">Page 47</p> <p>1 ALAN GELBSTEIN</p> <p>2 absolute lie.</p> <p>3 MR. THOMPSON: Objection.</p> <p>4 Q. And you don't recall the</p> <p>5 circumstances that precipitated that or</p> <p>6 initiated that?</p> <p>7 A. No, I don't.</p> <p>8 Q. Now, you wrote this affidavit</p> <p>9 on May 3, 2012; is that right?</p> <p>10 A. If that's what it says, that's</p> <p>11 when I wrote it.</p> <p>12 Q. And that's when I was removed</p> <p>13 from the Brooklyn TVB and that was when I</p> <p>14 was removed from the Brooklyn TVB in</p> <p>15 December of 2011.</p> <p>16 It was after that date; right?</p> <p>17 A. I don't recall when you were</p> <p>18 removed. I don't know the dates.</p> <p>19 Q. Well, I had an incident with a</p> <p>20 Yakov Brody on December 22, 2011, do you</p> <p>21 remember that?</p> <p>22 A. I remember -- I know of the</p> <p>23 incident.</p> <p>24 Q. Did you ever ask for my</p> <p>25 affidavit with respect to that incident?</p>
<p style="text-align: right;">Page 46</p> <p>1 ALAN GELBSTEIN</p> <p>2 necessary.</p> <p>3 Q. But, you used it to get me</p> <p>4 removed from the Brooklyn TVB, are you not?</p> <p>5 A. Not for that particular</p> <p>6 statement. It was just one of many, what I</p> <p>7 would call, offenses. It wasn't because of</p> <p>8 that, that I had you removed.</p> <p>9 Q. You don't -- and this -- what</p> <p>10 precipitated that conversation, do you</p> <p>11 remember that?</p> <p>12 A. No.</p> <p>13 Q. Do you have any complaints from</p> <p>14 a motorist or a client that I ever used an</p> <p>15 anti-Semitic or racist remark?</p> <p>16 A. Not from a motorist.</p> <p>17 Q. Or from a client; is that</p> <p>18 right?</p> <p>19 A. From a client I don't believe</p> <p>20 so.</p> <p>21 Q. But, I happen to call a Judge a</p> <p>22 beanie wearing kyke, is that your</p> <p>23 testimony?</p> <p>24 A. You called me.</p> <p>25 Q. I don't believe you. That's an</p>	<p style="text-align: right;">Page 48</p> <p>1 ALAN GELBSTEIN</p> <p>2 A. I did not ask you for an</p> <p>3 affidavit.</p> <p>4 Q. So, you just assumed what Yakov</p> <p>5 Brody was saying was the truth; right?</p> <p>6 MR. THOMPSON: Objection to the</p> <p>7 form. You can answer.</p> <p>8 A. Again, I don't recall with</p> <p>9 specificity, but I'm sure that I spoke to</p> <p>10 all the parties involved.</p> <p>11 Q. Did you think my affidavit</p> <p>12 because you took Yakov Brody's affidavit</p> <p>13 and every other attorney in the Brooklyn</p> <p>14 TVB's affidavit, but you didn't take mine.</p> <p>15 So, why wouldn't you take mine?</p> <p>16 MR. THOMPSON: Objection.</p> <p>17 A. Had you proffered one, I would</p> <p>18 have taken one.</p> <p>19 Q. You never gave me the</p> <p>20 opportunity to and never asked for one, but</p> <p>21 you asked every attorney to give you one?</p> <p>22 A. Excuse me, I didn't ask anybody</p> <p>23 for an affidavit. They came to me and they</p> <p>24 presented me with one.</p> <p>25 Q. On December -- after the</p>

12 (Pages 45 to 48)

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<p style="text-align: right;">Page 49</p> <p>1 ALAN GELBSTEIN</p> <p>2 incident with Yakov Brody you told me I was</p> <p>3 not welcome in the Brooklyn TVB any longer;</p> <p>4 is that correct?</p> <p>5 A. I don't recall saying that.</p> <p>6 Q. How was I going to get you an</p> <p>7 affidavit?</p> <p>8 A. I leave you to your devices how</p> <p>9 you get affidavits to anybody.</p> <p>10 Q. You gave my no opportunity to</p> <p>11 respond, is that true, by way of affidavit?</p> <p>12 A. No, that's not true.</p> <p>13 Q. What opportunity did you give</p> <p>14 me to respond?</p> <p>15 A. Had you presented me with an</p> <p>16 affidavit, I would have taken it.</p> <p>17 Q. Did you give me a hearing on</p> <p>18 any of these allegations against me, did</p> <p>19 you give me a hearing?</p> <p>20 A. I did not give you a hearing.</p> <p>21 Q. Did you give me the opportunity</p> <p>22 to present testimony?</p> <p>23 A. I didn't. There was no</p> <p>24 hearing, there was no testimony.</p> <p>25 Q. Did you give me the opportunity</p>	<p style="text-align: right;">Page 51</p> <p>1 ALAN GELBSTEIN</p> <p>2 A. No, that's not fair.</p> <p>3 Q. When did you receive an</p> <p>4 affidavit in response?</p> <p>5 A. I never received one from you.</p> <p>6 Q. So, you're saying I'm allowing</p> <p>7 you to remove me from the Brooklyn TVB and</p> <p>8 I'm not going to file an affidavit in</p> <p>9 response, is that what you're telling me?</p> <p>10 MR. THOMPSON: Objection,</p> <p>11 assumes --</p> <p>12 A. I can't tell you what you're</p> <p>13 going to do.</p> <p>14 Q. Now, let me get to some of the</p> <p>15 more -- were you personally involved,</p> <p>16 Defendant Gelbstein, in my removal from the</p> <p>17 DMV, Brooklyn TVB and from the practice of</p> <p>18 law in all New York TVBs on the morning of</p> <p>19 May 11, 2015?</p> <p>20 MR. THOMPSON: Objection.</p> <p>21 A. I don't know what you mean by</p> <p>22 personally involved?</p> <p>23 Q. Did you have Defendant Calvo</p> <p>24 remove me?</p> <p>25 A. I don't remember with</p>
<p style="text-align: right;">Page 50</p> <p>1 ALAN GELBSTEIN</p> <p>2 to present evidence in response?</p> <p>3 A. You could have presented</p> <p>4 evidence like every other attorney who</p> <p>5 presented evidence.</p> <p>6 Q. Did you show me the affidavit</p> <p>7 that was being used against me, did you</p> <p>8 ever show me Yakov Brody's affidavit?</p> <p>9 A. I did not.</p> <p>10 Q. So, how could I have responded</p> <p>11 to what he said against me; you are a judge</p> <p>12 am I right?</p> <p>13 A. I'm not a judge with regard to</p> <p>14 interactions between the various attorneys</p> <p>15 in the office. I'm a judge with regard to</p> <p>16 motorists, police officers and specific</p> <p>17 charges against them.</p> <p>18 Q. But, you had me removed on all</p> <p>19 those affidavits and all those allegations</p> <p>20 against my conduct without ever giving me</p> <p>21 an opportunity to present an affidavit in</p> <p>22 response.</p> <p>23 Is that fair?</p> <p>24 MR. THOMPSON: Objection to</p> <p>25 form.</p>	<p style="text-align: right;">Page 52</p> <p>1 ALAN GELBSTEIN</p> <p>2 specificity, but certainly you were</p> <p>3 removed.</p> <p>4 Q. And that was by your direction,</p> <p>5 was it not?</p> <p>6 MR. THOMPSON: Objection, asked</p> <p>7 and answered. You can respond.</p> <p>8 THE WITNESS: I beg your</p> <p>9 pardon, Counselor?</p> <p>10 MR. THOMPSON: You can answer.</p> <p>11 A. Yeah, I don't know if it was my</p> <p>12 ultimate direction or I was taking counsel</p> <p>13 from others above me who gave me direction</p> <p>14 to do it.</p> <p>15 Q. Are you throwing Danielle under</p> <p>16 the bus, is that what you're doing</p> <p>17 Defendant Gelbstein?</p> <p>18 MR. THOMPSON: Objection to the</p> <p>19 form of the question.</p> <p>20 Q. Are you letting Defendant Calvo</p> <p>21 take the blame for this incident, is that</p> <p>22 what you're doing?</p> <p>23 MR. THOMPSON: Same objection.</p> <p>24 You can answer.</p> <p>25 A. Absolutely not.</p>

13 (Pages 49 to 52)

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<p style="text-align: right;">Page 53</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. Because the police report that</p> <p>3 I showed you earlier indicated that Judge</p> <p>4 Gelbstein, it indicated, that I was told by</p> <p>5 Judge Gelbstein to go to the police room</p> <p>6 and have the police officers remove me from</p> <p>7 the Brooklyn TVB, right, you saw that --</p> <p>8 A. I did.</p> <p>9 Q. -- police report.</p> <p>10 So, you're stating now that you</p> <p>11 are not personally involved in my removal,</p> <p>12 is that what you are stating?</p> <p>13 A. No, that's not what I'm</p> <p>14 stating.</p> <p>15 Q. I'll ask it again.</p> <p>16 Were you personally involved in</p> <p>17 my removal from the Brooklyn TVB?</p> <p>18 MR. THOMPSON: Objection, asked</p> <p>19 and answered. You can answer.</p> <p>20 A. I certainly had involvement.</p> <p>21 Q. Now, did you have me removed</p> <p>22 because you read the letter of March 20th</p> <p>23 of 2015 which I complained about your</p> <p>24 actions and your conduct at the Brooklyn</p> <p>25 TVB?</p>	<p style="text-align: right;">Page 55</p> <p>1 ALAN GELBSTEIN</p> <p>2 A. No.</p> <p>3 Q. Did you have the ability to</p> <p>4 control the actions of Defendant Smart?</p> <p>5 A. In theory I could control him</p> <p>6 totally, but I did not direct his</p> <p>7 day-to-day activity.</p> <p>8 Q. Who directed his day-to-day</p> <p>9 activities?</p> <p>10 A. The clerical supervisor.</p> <p>11 Q. Who is she?</p> <p>12 A. Either the two principal clerks</p> <p>13 at the time, or the supervising clerk.</p> <p>14 Q. What's their names?</p> <p>15 A. Danielle was the chief clerk</p> <p>16 and the other one was Levine at the time.</p> <p>17 Q. Now, I made complaints against</p> <p>18 Defendant Smart, written complaints to your</p> <p>19 office, did you pass those complaints onto</p> <p>20 the clerical supervisors?</p> <p>21 A. No, I personally called him</p> <p>22 into my office when you complained about</p> <p>23 him.</p> <p>24 Q. I made a complaint, I made</p> <p>25 several complaints. I made one complaint</p>
<p style="text-align: right;">Page 54</p> <p>1 ALAN GELBSTEIN</p> <p>2 A. Which letter is that?</p> <p>3 Q. The March 20, 2015 letter that</p> <p>4 I wrote to Pricket-Morgan?</p> <p>5 A. No, it had nothing to do with</p> <p>6 that letter.</p> <p>7 Q. Were you offended by that</p> <p>8 letter that I called you -- that I told you</p> <p>9 that you were incapable, incompetent and</p> <p>10 complicit?</p> <p>11 A. Not at all. No, I was not</p> <p>12 offended.</p> <p>13 Q. You were not offended?</p> <p>14 A. No, sir.</p> <p>15 Q. You were not mad at that?</p> <p>16 A. No, sir.</p> <p>17 Q. You had no animus against me</p> <p>18 because of that letter?</p> <p>19 A. None whatsoever.</p> <p>20 Q. You're a better man than I am.</p> <p>21 Were you negligent in the</p> <p>22 supervision of Defendant Smart?</p> <p>23 MR. THOMPSON: Objection, calls</p> <p>24 for a legal conclusion. You can</p> <p>25 answer.</p>	<p style="text-align: right;">Page 56</p> <p>1 ALAN GELBSTEIN</p> <p>2 that Defendant Smart stole \$80 on a \$100</p> <p>3 fee.</p> <p>4 Do you recall me making that</p> <p>5 complaint to you?</p> <p>6 A. Not that specific complaint.</p> <p>7 Q. In June of 2012 I made a</p> <p>8 complaint that Defendant Smart stole a fee,</p> <p>9 you don't recall me making that complaint</p> <p>10 to you?</p> <p>11 A. You might have.</p> <p>12 Q. Was an investigation made</p> <p>13 concerning the theft by your office?</p> <p>14 A. I don't recall at this time.</p> <p>15 Q. So, an investigation might have</p> <p>16 been made, is that what you're saying?</p> <p>17 A. Might have been.</p> <p>18 Q. Do you recall the results of</p> <p>19 that investigation?</p> <p>20 A. No, I don't remember the</p> <p>21 results of any investigation.</p> <p>22 Q. So, it's fair to say that --</p> <p>23 I'm saying that Defendant Smart stole \$80</p> <p>24 on a \$150 and you allowed Defendant Smart</p> <p>25 to remain in the Brooklyn TVB after my</p>

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<p style="text-align: right;">Page 57</p> <p>1 ALAN GELBSTEIN</p> <p>2 complaint concerning the theft; is that</p> <p>3 correct?</p> <p>4 MR. THOMPSON: Objection to</p> <p>5 form, you can answer.</p> <p>6 A. Well, again, I don't recall the</p> <p>7 complaint with particularity nor my</p> <p>8 investigation of such an event nor my</p> <p>9 conclusions based on my investigation had I</p> <p>10 indeed investigated.</p> <p>11 Q. So, you swept my complaint</p> <p>12 under the rug, is that a fair statement?</p> <p>13 MR. THOMPSON: Objection to</p> <p>14 form.</p> <p>15 A. No, it's not a fair statement.</p> <p>16 Q. What did you do in reference to</p> <p>17 my complaint that he stole \$80?</p> <p>18 A. I don't recall the specific</p> <p>19 complaint. I don't recall the result of an</p> <p>20 investigation and I don't recall any</p> <p>21 conclusion I may have reached at the time.</p> <p>22 You're talking about something that</p> <p>23 occurred in 2012, when we're now in the</p> <p>24 cusp of 2021.</p> <p>25 Q. But, after I made that</p>	<p style="text-align: right;">Page 59</p> <p>1 ALAN GELBSTEIN</p> <p>2 Defendant Smart stood up, gave me a spear</p> <p>3 hand and the sign of the cross and pointed</p> <p>4 it directly at me.</p> <p>5 Do you recall that complaint to</p> <p>6 your office?</p> <p>7 A. No.</p> <p>8 Q. Did you take any action with</p> <p>9 respect to that complaint?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did you look at the videotape</p> <p>12 with respect to that complaint?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you recall that I made a</p> <p>15 complaint to your office that I was</p> <p>16 standing near one of your trash cans in the</p> <p>17 Brooklyn TVB and there was an umbrella</p> <p>18 laying on the can?</p> <p>19 A. I kind of remember that, yes.</p> <p>20 Q. And Defendant Smart said,</p> <p>21 "don't touch it or else," do you recall</p> <p>22 that?</p> <p>23 A. No, he didn't say it in my</p> <p>24 presence.</p> <p>25 Q. But, you recall me complaining</p>
<p style="text-align: right;">Page 58</p> <p>1 ALAN GELBSTEIN</p> <p>2 complaint it's fair to say that Defendant</p> <p>3 Smart is still working at the Brooklyn TVB?</p> <p>4 A. Yes.</p> <p>5 Q. And after that complaint, that</p> <p>6 is when Defendant Smart harassment began,</p> <p>7 is that a fair statement?</p> <p>8 A. No.</p> <p>9 MR. THOMPSON: Objection to</p> <p>10 form.</p> <p>11 Q. Well, were there complaints of</p> <p>12 harassments and threats and threats of</p> <p>13 physical contact on my person, after I made</p> <p>14 that complaint to your office?</p> <p>15 A. I don't recall.</p> <p>16 Q. Were there complaints made to</p> <p>17 your office after that report of theft to</p> <p>18 you?</p> <p>19 A. I don't remember the sequences</p> <p>20 of events, whether it was before or after.</p> <p>21 I don't recall.</p> <p>22 Q. I'll bring them to your</p> <p>23 attention.</p> <p>24 Do you recall in December of</p> <p>25 2014 that I made a complaint to you that</p>	<p style="text-align: right;">Page 60</p> <p>1 ALAN GELBSTEIN</p> <p>2 to you of that?</p> <p>3 A. I remember there was a to-do</p> <p>4 with you, I don't remember with Smart so</p> <p>5 much as it was one of my principal clerks</p> <p>6 that brought the complaint to my attention.</p> <p>7 Q. That I moved an umbrella?</p> <p>8 A. An umbrella or a clip. I'm</p> <p>9 trying -- a paper clip, it was something, I</p> <p>10 don't remember what it was. I remember it</p> <p>11 was what I had in my estimation a</p> <p>12 ridiculous argument about a garbage can and</p> <p>13 being it moved and something above it.</p> <p>14 Q. It had nothing to do with a</p> <p>15 garbage can, it was a threat by Mr. Smart</p> <p>16 -- Defendant Smart, upon my person?</p> <p>17 A. I don't remember that aspect of</p> <p>18 it. I just remember there was a garbage</p> <p>19 can and stuff on it, as you say, either an</p> <p>20 umbrella or it might have been a paper</p> <p>21 clip, but something to do about you and a</p> <p>22 garbage can, that's what I recall.</p> <p>23 Q. It was an umbrella that I was</p> <p>24 told not to move or else by your security</p> <p>25 guard Defendant Smart?</p>

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<p style="text-align: right;">Page 61</p> <p>1 ALAN GELBSTEIN</p> <p>2 A. I don't recall.</p> <p>3 MR. THOMPSON: Objection to</p> <p>4 form.</p> <p>5 A. I don't recall that aspect of</p> <p>6 it.</p> <p>7 Q. Did you have a deliberate</p> <p>8 indifference and callousness to my</p> <p>9 complaints?</p> <p>10 A. I'm sorry, repeat?</p> <p>11 MR. THOMPSON: Objection to the</p> <p>12 form of the question.</p> <p>13 Q. Did you have an deliberate</p> <p>14 indifference and callousness to my</p> <p>15 complaints?</p> <p>16 A. Callousness?</p> <p>17 Q. To responding to my complaints?</p> <p>18 MR. THOMPSON: Objection to the</p> <p>19 form, you can answer.</p> <p>20 A. I don't understand the</p> <p>21 question.</p> <p>22 Q. Were you indifferent to my</p> <p>23 complaints?</p> <p>24 A. No, I take every complaint from</p> <p>25 every individual.</p>	<p style="text-align: right;">Page 63</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. Well, let me show you the</p> <p>3 police report. Let me show you the police</p> <p>4 report.</p> <p>5 Can we go to Exhibit 67?</p> <p>6 (Whereupon, Plaintiff's Exhibit</p> <p>7 67, previously marked, was</p> <p>8 introduced.)</p> <p>9 Q. Now, do you know who that name</p> <p>10 is at the top Danielle Calvo?</p> <p>11 A. Yes.</p> <p>12 Q. Is she your clerk supervisor?</p> <p>13 A. Yes.</p> <p>14 Q. I'll direct your attention to</p> <p>15 the third page of that exhibit, Ma'am, if</p> <p>16 we could.</p> <p>17 I ask you to look at this first</p> <p>18 paragraph and I direct your attention to</p> <p>19 this first paragraph it says, "Mr.</p> <p>20 Capogrosso said back up, back up."</p> <p>21 Did you take note of that</p> <p>22 police report when I said "back up, back</p> <p>23 up"?</p> <p>24 A. Yes, I see it.</p> <p>25 Q. What was your opinion of that</p>
<p style="text-align: right;">Page 62</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. But, after I made the</p> <p>3 complaints, the harassment continued, is</p> <p>4 that fair to say?</p> <p>5 MR. THOMPSON: Objection to</p> <p>6 form, you can answer.</p> <p>7 A. That your harassment or being</p> <p>8 harassed?</p> <p>9 Q. My harassment by Defendant</p> <p>10 Smart, is that fair to say?</p> <p>11 A. No.</p> <p>12 Q. Defendant Smart approach me on</p> <p>13 the morning of May 11, 2015 unprovoked?</p> <p>14 A. I don't know.</p> <p>15 Q. The police report indicates I</p> <p>16 told him to "back up, back up"; is that</p> <p>17 fair to say?</p> <p>18 A. I wasn't there, I could not</p> <p>19 tell you.</p> <p>20 Q. Did you read the police report?</p> <p>21 A. At the time, yes.</p> <p>22 Q. And did it mention the fact</p> <p>23 that I said to Defendant Smart, "back up,</p> <p>24 back up"?</p> <p>25 A. You might have, I don't recall.</p>	<p style="text-align: right;">Page 64</p> <p>1 ALAN GELBSTEIN</p> <p>2 report?</p> <p>3 A. My opinion? My opinion was</p> <p>4 that regardless of whatever words were</p> <p>5 spoken, no one showed ever make contact</p> <p>6 physically with another individual.</p> <p>7 Q. Did you know or did you look at</p> <p>8 the tape that Defendant Smart approached me</p> <p>9 from about 20 feet away?</p> <p>10 MR. THOMPSON: Objection,</p> <p>11 argumentative, asked and answered.</p> <p>12 Q. Do you have any knowledge as to</p> <p>13 how Defendant Smart approached me?</p> <p>14 A. I was not there, I have no</p> <p>15 idea.</p> <p>16 Q. And you didn't look at the</p> <p>17 videotape that morning, did you?</p> <p>18 A. I don't recall if I did or not.</p> <p>19 Q. Well, what if I was to tell you</p> <p>20 that Defendant Smart crossed over two</p> <p>21 security barriers, two, and got with within</p> <p>22 three inches of my face with a clenched</p> <p>23 fist and a dipped head, what would you</p> <p>24 think of that, what would be your opinion?</p> <p>25 MR. THOMPSON: Objection to</p>

16 (Pages 61 to 64)

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<p style="text-align: right;">Page 65</p> <p>1 ALAN GELBSTEIN</p> <p>2 form, you can answer.</p> <p>3 THE WITNESS: Answer that?</p> <p>4 MR. THOMPSON: I object to the</p> <p>5 form of the question, but yes, you</p> <p>6 can answer the question.</p> <p>7 A. It calls for my speculation, I</p> <p>8 don't know what I would have thought at the</p> <p>9 time.</p> <p>10 Q. So, you're saying you condone</p> <p>11 the behavior of Defendant Smart getting</p> <p>12 within three inches of my face, clenching</p> <p>13 his fist and dipping his head?</p> <p>14 MR. THOMPSON: Objection to the</p> <p>15 form.</p> <p>16 A. Had he done that, I would have</p> <p>17 not been happy with his action.</p> <p>18 Q. But, you never confirmed what</p> <p>19 he did because you never look at the</p> <p>20 videotape; right?</p> <p>21 A. I don't recall.</p> <p>22 Q. Judge what do you get paid to</p> <p>23 do at the Brooklyn TVB?</p> <p>24 A. I get paid to manage the</p> <p>25 office, to supervise principally the judges</p>	<p style="text-align: right;">Page 67</p> <p>1 ALAN GELBSTEIN</p> <p>2 79, previously marked, was</p> <p>3 introduced.)</p> <p>4 Q. Do you recall that report?</p> <p>5 A. No, I don't.</p> <p>6 Q. Was that report made under your</p> <p>7 watch, under your term?</p> <p>8 MR. THOMPSON: Objection to</p> <p>9 form.</p> <p>10 A. It occurred on May 16th of</p> <p>11 2013, so it would have occurred while I was</p> <p>12 the supervising judge -- senior judge in</p> <p>13 that office.</p> <p>14 Q. But you had no knowledge of</p> <p>15 that report?</p> <p>16 A. I don't recall it. I don't</p> <p>17 recall this document coming to me. It</p> <p>18 seems that Mrs. Burke who was the</p> <p>19 supervisor of the other part of the</p> <p>20 building, the DMV, is involved with this</p> <p>21 one. I don't believe I am.</p> <p>22 Q. Well, obviously if there's an</p> <p>23 altercation or a confrontation to the</p> <p>24 people at Brooklyn TVB in some manner or</p> <p>25 respect between a security guard and</p>
<p style="text-align: right;">Page 66</p> <p>1 ALAN GELBSTEIN</p> <p>2 at the office.</p> <p>3 Q. Do you have control of the</p> <p>4 actions of everybody in that office?</p> <p>5 A. There's a hierarchy and as I</p> <p>6 said, my principal job was to take care of</p> <p>7 the legal side, take care of the judges.</p> <p>8 There's questions about questions of law,</p> <p>9 that type of thing. That was my bailiwick,</p> <p>10 most everything else was delegated to the</p> <p>11 clerical supervisory staff including the</p> <p>12 direct supervision of David Smart.</p> <p>13 Q. So, Danielle Calvo is</p> <p>14 responsible for the supervision of</p> <p>15 Defendant Smart's action, is that what</p> <p>16 you're saying?</p> <p>17 A. I'm saying that she, too. I</p> <p>18 am, every supervisor is.</p> <p>19 Q. Now, Defendant Smart also had</p> <p>20 another altercation with another security</p> <p>21 guard at some point in time in 2013?</p> <p>22 A. I don't recall such a --</p> <p>23 Q. Well, let me draw your</p> <p>24 attention to it. Can we to Exhibit 79.</p> <p>25 (Whereupon, Plaintiff's Exhibit</p>	<p style="text-align: right;">Page 68</p> <p>1 ALAN GELBSTEIN</p> <p>2 another security guard, PEC Group who was</p> <p>3 the employer of Defendant Smart who</p> <p>4 Defendant Smart worked for, could be called</p> <p>5 in to rectify it.</p> <p>6 Is that fair?</p> <p>7 MR. THOMPSON: Objection to</p> <p>8 form, you can answer.</p> <p>9 A. Should be called in? I'm not</p> <p>10 sure I understand the question.</p> <p>11 Q. Did you ever call PEC Group</p> <p>12 with respect to my complaints to you of the</p> <p>13 harassment and threats by Defendant Smart?</p> <p>14 A. I don't believe I have ever</p> <p>15 spoke to PEC Group of New York, Inc.</p> <p>16 Q. You never called them?</p> <p>17 A. I don't believe I've ever</p> <p>18 spoken to them.</p> <p>19 Q. So you took responsibility of</p> <p>20 the actions of Defendant Smart, not PEC</p> <p>21 Group?</p> <p>22 MR. THOMPSON: Objection to</p> <p>23 form.</p> <p>24 A. No, that's not true.</p> <p>25 Q. All right.</p>

17 (Pages 65 to 68)

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<p style="text-align: right;">Page 69</p> <p>1 ALAN GELBSTEIN</p> <p>2 To whom, to whom do threats of</p> <p>3 violence and harassment and theft get</p> <p>4 reported to, if not PEC Group and not to</p> <p>5 you?</p> <p>6 A. Oh, I get reported to when my</p> <p>7 supervisors bring something to me. If they</p> <p>8 don't bring something to me or Mrs. Burke</p> <p>9 who is a director of the DMV doesn't bring</p> <p>10 it to me, I would not be aware of it. I'm</p> <p>11 only aware of what people bring to me.</p> <p>12 Q. And so my complaint that I</p> <p>13 brought to you, you never brought to PEC</p> <p>14 Group, is that fair?</p> <p>15 MR. THOMPSON: Objection, asked</p> <p>16 and answered.</p> <p>17 A. I did not bring it to PEC</p> <p>18 Group.</p> <p>19 Q. You took responsibility for</p> <p>20 Defendant Smart's actions; is that fair?</p> <p>21 A. No, that's not fair.</p> <p>22 Q. Who took responsibility if the</p> <p>23 complaints were brought to your office?</p> <p>24 A. As I said earlier --</p> <p>25 MR. THOMPSON: Objection to</p>	<p style="text-align: right;">Page 71</p> <p>1 ALAN GELBSTEIN</p> <p>2 don't specifically recall.</p> <p>3 Q. I'll direct your attention to</p> <p>4 Exhibit 39.</p> <p>5 (Whereupon, Plaintiff's Exhibit</p> <p>6 39, previously marked, was</p> <p>7 introduced.)</p> <p>8 Q. Are you familiar with this</p> <p>9 document?</p> <p>10 A. I don't know what it is.</p> <p>11 Q. It says, "Capogrosso v.</p> <p>12 Gelbstein," at the top, states defendant's</p> <p>13 privilege log.</p> <p>14 Are you familiar with that?</p> <p>15 A. No.</p> <p>16 Q. Let me direct your attention</p> <p>17 down to the fourth row, the fourth row.</p> <p>18 MR. THOMPSON: Mr. Capogrosso</p> <p>19 let me just put down a marker. We</p> <p>20 produced this privilege log to you</p> <p>21 because these conversations are</p> <p>22 privileged and so, it's not in bounds</p> <p>23 to ask about them.</p> <p>24 Any question as to these</p> <p>25 conversations, any questions to</p>
<p style="text-align: right;">Page 70</p> <p>1 ALAN GELBSTEIN</p> <p>2 form.</p> <p>3 A. -- when you made a complaint to</p> <p>4 me about David Smart, I spoke to him about</p> <p>5 the complaint.</p> <p>6 Q. Were you anticipating</p> <p>7 litigation between myself and the DMV?</p> <p>8 A. Did I anticipate litigation?</p> <p>9 Q. Yes.</p> <p>10 A. No.</p> <p>11 Q. Were you having conversations</p> <p>12 with Defendant Traschen and who was a</p> <p>13 Defendant in this case, Bushra Vahdat,</p> <p>14 about anticipated litigation with Mario</p> <p>15 Capogrosso?</p> <p>16 MR. THOMPSON: Objection to the</p> <p>17 form, you can answer.</p> <p>18 A. No.</p> <p>19 Q. You did not.</p> <p>20 Did you have e-mails going back</p> <p>21 and forth between yourself, Defendant</p> <p>22 Traschen and Bushra Vahdat concerning</p> <p>23 possible litigation between the DMV and</p> <p>24 myself, Mario Capogrosso?</p> <p>25 A. At some point we might have, I</p>	<p style="text-align: right;">Page 72</p> <p>1 ALAN GELBSTEIN</p> <p>2 communications is objectionable and</p> <p>3 we object to it and I'll instruct the</p> <p>4 witness not to answer.</p> <p>5 MR. CAPOGROSSO: In not</p> <p>6 questioning concerning the content,</p> <p>7 in questioning concerning the log.</p> <p>8 There's a difference.</p> <p>9 MR. THOMPSON: I'll listen to</p> <p>10 your question if you pose one, but --</p> <p>11 MR. CAPOGROSSO: I understand.</p> <p>12 I'm not going to question about the</p> <p>13 content, I'm going to question about</p> <p>14 the log. There's a log at the top,</p> <p>15 sent from.</p> <p>16 MR. THOMPSON: He didn't</p> <p>17 produce the log, I did.</p> <p>18 MR. CAPOGROSSO: All right.</p> <p>19 Q. There was correspondence</p> <p>20 between yourself, Bushra Vahdat, Alan</p> <p>21 Gelbstein, Ida Traschen look at the fourth</p> <p>22 row down?</p> <p>23 A. I see it.</p> <p>24 Q. Fine.</p> <p>25 Now, the description of that</p>

18 (Pages 69 to 72)

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<p style="text-align: right;">Page 73</p> <p>1 ALAN GELBSTEIN</p> <p>2 states, "e-mail correspondence with DMV</p> <p>3 regarding incident with Capogrosso prepared</p> <p>4 in anticipation of litigation."</p> <p>5 Prepared in anticipation of</p> <p>6 litigation, this is a log created by the</p> <p>7 DMV, right, and that entry was made on</p> <p>8 5/18/2014.</p> <p>9 Now, I'm going not going to ask</p> <p>10 you what the e-mail stated, but why were</p> <p>11 you anticipating litigation on May 8, 2014?</p> <p>12 MR. THOMPSON: I'm going to</p> <p>13 object to -- I'm going to object this</p> <p>14 question and instruct the witness not</p> <p>15 to answer.</p> <p>16 There are a number of things</p> <p>17 that are wrong with that question.</p> <p>18 As I said, the privilege log was</p> <p>19 created by our office, not by DMV and</p> <p>20 not by Mr. Gelbstein, and I don't</p> <p>21 think it's an appropriate thing to</p> <p>22 question him on.</p> <p>23 Q. So, what your testimony here is</p> <p>24 today, is that there was no -- that you not</p> <p>25 anticipate litigation with myself and the</p>	<p style="text-align: right;">Page 75</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. Let me direct your attention to</p> <p>3 Exhibit 36.</p> <p>4 (Whereupon, Plaintiff's Exhibit</p> <p>5 36, previously marked, was</p> <p>6 introduced.)</p> <p>7 Q. Now, this is a docket in the</p> <p>8 matter of Teague -- this is an attorney,</p> <p>9 matter of Teague, Eamon Teague who also</p> <p>10 happens to be a lawyer in the traffic</p> <p>11 violations bureau.</p> <p>12 Are you familiar with Eamon</p> <p>13 Teague?</p> <p>14 A. No.</p> <p>15 Q. Are you familiar with the</p> <p>16 matter of Teague?</p> <p>17 A. No.</p> <p>18 Q. Are you familiar that the DMV</p> <p>19 brought a grievance against Eamon Teague to</p> <p>20 the grievance committee?</p> <p>21 MR. THOMPSON: Objection to the</p> <p>22 form.</p> <p>23 A. No.</p> <p>24 Q. Are you familiar with an</p> <p>25 investigation by the grievance committee</p>
<p style="text-align: right;">Page 74</p> <p>1 ALAN GELBSTEIN</p> <p>2 DMV, prior to the event of May 11, 2015.</p> <p>3 Is that your testimony?</p> <p>4 MR. THOMPSON: Is that your</p> <p>5 question to Mr. Gelbstein?</p> <p>6 MR. CAPOGROSSO: Yes.</p> <p>7 MR. THOMPSON: I object to the</p> <p>8 form, but you can answer that.</p> <p>9 A. I don't believe that anything</p> <p>10 that we did was in anticipation of</p> <p>11 litigation, but that could have changed</p> <p>12 somewhere down the line. I couldn't tell</p> <p>13 you when the anticipation began, but it</p> <p>14 certainly wasn't my worry about litigation</p> <p>15 one way or the other.</p> <p>16 Q. Wasn't your worry about</p> <p>17 litigation.</p> <p>18 So, you allowed the harassment</p> <p>19 of Defendant Smart to continue, it wasn't</p> <p>20 your worry to resolve it, and that wasn't</p> <p>21 your issue; is that right?</p> <p>22 MR. THOMPSON: I'll object to</p> <p>23 the form of the question, you can</p> <p>24 answer.</p> <p>25 A. The answer is no.</p>	<p style="text-align: right;">Page 76</p> <p>1 ALAN GELBSTEIN</p> <p>2 concerning the actions of Eamon Teague?</p> <p>3 MR. THOMPSON: Objection, asked</p> <p>4 and answered.</p> <p>5 Q. I can't hear the answer, are</p> <p>6 you familiar with it?</p> <p>7 A. I don't know anything about</p> <p>8 this particular --</p> <p>9 Q. So, you're not familiar with</p> <p>10 the grievance that the DMV brought against</p> <p>11 Eamon Teague; is that fair?</p> <p>12 A. Am I aware of an action that</p> <p>13 the DMV brought against who?</p> <p>14 Q. Eamon Teague an attorney who</p> <p>15 worked at the TVB?</p> <p>16 A. No, I don't know anything about</p> <p>17 this.</p> <p>18 Q. Did you ever grieve my office</p> <p>19 for my actions at the Brooklyn TVB or any</p> <p>20 TVB?</p> <p>21 A. I did not.</p> <p>22 Q. Why did you not?</p> <p>23 A. Why did I not grieve you?</p> <p>24 Q. Yeah, why didn't you grieve me?</p> <p>25 A. Because I don't grieve any</p>

19 (Pages 73 to 76)

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<p>1 ALAN GELBSTEIN</p> <p>2 attorney whose livelihood depends on a</p> <p>3 practice of law. I know the severity of</p> <p>4 grievance committees and what an attorney</p> <p>5 goes through and so if there's a problem, I</p> <p>6 try to help resolve the issues without</p> <p>7 going to the grievance committee.</p> <p>8 I very -- it has to be</p> <p>9 something really, really terribly severe</p> <p>10 for me to go to the appellate division.</p> <p>11 Q. So you, the DMV, Ida Traschen</p> <p>12 rather just have me banned from the</p> <p>13 practice of law at all TVBs, right, as</p> <p>14 opposed to going to the grievance</p> <p>15 committee, how is that helping me?</p> <p>16 MR. THOMPSON: Objection to the</p> <p>17 form, you can answer.</p> <p>18 A. That wasn't my decision.</p> <p>19 Q. I was banned from the practice</p> <p>20 of law at all TVBs and you had no input in</p> <p>21 that decision?</p> <p>22 A. No, sir.</p> <p>23 MR. THOMPSON: Objection.</p> <p>24 A. I don't have the authority to</p> <p>25 ban you in any other office, other than my</p>	<p>1 ALAN GELBSTEIN</p> <p>2 Q. So, what you're saying in</p> <p>3 essence is none of the complaints or</p> <p>4 affidavits would have had any merit or</p> <p>5 weight before the grievance committee, is</p> <p>6 that fair to say?</p> <p>7 MR. THOMPSON: Objection.</p> <p>8 A. No.</p> <p>9 Q. Is that the reason you didn't</p> <p>10 bring me before the grievance committee?</p> <p>11 A. No.</p> <p>12 Q. Now, you're familiar with the</p> <p>13 42SC1983 with the U.S. statute which is one</p> <p>14 of the basis for my complaint.</p> <p>15 Are you familiar with it?</p> <p>16 A. No.</p> <p>17 Q. You're not, you didn't read my</p> <p>18 complaint?</p> <p>19 A. I did read your complaint.</p> <p>20 Q. You're not familiar with</p> <p>21 42SC1983?</p> <p>22 A. No.</p> <p>23 Q. It states in part, "every</p> <p>24 person under the color of statute</p> <p>25 ordinance, regulation of state or</p>
Page 78	Page 80
<p>1 ALAN GELBSTEIN</p> <p>2 own.</p> <p>3 Q. But your office never grieved</p> <p>4 me?</p> <p>5 A. I never grieved you, no.</p> <p>6 Q. And your office therefore never</p> <p>7 gave me an opportunity because I would have</p> <p>8 rather have been grieved to present my</p> <p>9 argument and my case before a grievance</p> <p>10 committee.</p> <p>11 A. Is that a question?</p> <p>12 Q. Is it fair that there was no</p> <p>13 basis or merit, no basis or merit for any</p> <p>14 of the complaints filed against me?</p> <p>15 A. That's not the case.</p> <p>16 MR. THOMPSON: Objection to</p> <p>17 form.</p> <p>18 A. That's not the case.</p> <p>19 Q. You liked me, that's why you</p> <p>20 didn't grieve me, is that it?</p> <p>21 A. I didn't like you and I didn't</p> <p>22 dislike you.</p> <p>23 Q. But, you just banned me from</p> <p>24 the practice of law from the Brooklyn TVB?</p> <p>25 A. That's correct.</p>	<p>1 ALAN GELBSTEIN</p> <p>2 territory."</p> <p>3 Now, under the color of state</p> <p>4 law, that's what it begins with. Was</p> <p>5 Defendant Smart acting as a security guard</p> <p>6 for the DMV?</p> <p>7 MR. THOMPSON: Objection.</p> <p>8 Withdrawn.</p> <p>9 Q. Was he acting as a security</p> <p>10 guard for the DMV?</p> <p>11 A. Yes.</p> <p>12 Q. Who is the employer of</p> <p>13 Defendant Smart?</p> <p>14 A. Either P-E-C that you indicated</p> <p>15 earlier.</p> <p>16 Q. Who paid Defendant Smart's</p> <p>17 salary?</p> <p>18 A. I don't know with specificity,</p> <p>19 but I would assume it was PEC.</p> <p>20 Q. Did the DMV have a contract</p> <p>21 with PEC Group?</p> <p>22 A. I never saw one, I would assume</p> <p>23 so.</p> <p>24 Q. How did Defendant Smart show up</p> <p>25 at your Brooklyn TVB?</p>

20 (Pages 77 to 80)

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<p>1 ALAN GELBSTEIN</p> <p>2 A. I'm sorry?</p> <p>3 Q. How did he show up; who hired</p> <p>4 him?</p> <p>5 A. He was hired I assume by PEC.</p> <p>6 Q. And he had a contract and PEC</p> <p>7 had a contract with the DMV to supply his</p> <p>8 service?</p> <p>9 A. I don't know for sure, I only</p> <p>10 assume so.</p> <p>11 Q. And you don't know who paid PEC</p> <p>12 for his services?</p> <p>13 A. Who paid PEC?</p> <p>14 Q. For Defendant Smart service?</p> <p>15 A. I assume the State paid PEC.</p> <p>16 Q. And you had the authority to</p> <p>17 regulate the actions of Defendant Smart, is</p> <p>18 that fair to say?</p> <p>19 MR. THOMPSON: Objection to</p> <p>20 form, you can answer.</p> <p>21 A. Yes.</p> <p>22 MR. THOMPSON: While we're at a</p> <p>23 bit of a lull Mr. Capogrosso, just so</p> <p>24 you're aware Ms. Traschen is at her</p> <p>25 computer and ready to join whenever</p>	<p>1 ALAN GELBSTEIN</p> <p>2 MR. THOMPSON: Objection, asked</p> <p>3 and answered.</p> <p>4 A. No.</p> <p>5 Q. Now, I observed you having</p> <p>6 Jewish ticket brokers, you know what a</p> <p>7 ticket broker is, right, Judge Gelbstein?</p> <p>8 A. Yes.</p> <p>9 Q. And I observed them in your</p> <p>10 office on a weekly basis; is that true, I</p> <p>11 observed them in your office; do you have</p> <p>12 Jewish ticket brokers in your office on a</p> <p>13 weekly basis?</p> <p>14 A. No.</p> <p>15 Q. You have Jewish ticket brokers</p> <p>16 visiting your office?</p> <p>17 A. I've had people visit my</p> <p>18 office, yes.</p> <p>19 Q. Were they ticket brokers?</p> <p>20 A. They could have been ticket</p> <p>21 brokers. I believe I know what you're</p> <p>22 referring to, yes, it was a Jewish -- it</p> <p>23 was one that you would perhaps call a</p> <p>24 Jewish ticket broker.</p> <p>25 Q. And they're in your office on a</p>
Page 82	Page 84
<p>1 ALAN GELBSTEIN</p> <p>2 we're ready to start that.</p> <p>3 MR. CAPOGROSSO: I have eight</p> <p>4 more minutes.</p> <p>5 Q. Now, I was removed from the</p> <p>6 Brooklyn TVB on May 11, 2015, the police</p> <p>7 report then indicates that Danielle Calvo</p> <p>8 told you -- was told by you to have me</p> <p>9 removed.</p> <p>10 You were possession of a letter</p> <p>11 that I wrote on March 20, 2015. I showed</p> <p>12 you that letter that I sent to</p> <p>13 Pricket-Morgan. You indicated that you</p> <p>14 received that letter and then I was removed</p> <p>15 on May 11, 2015.</p> <p>16 Were you attempting to chill my</p> <p>17 first amendment right to freedom of speech</p> <p>18 by having me removed, Defendant Gelbstein?</p> <p>19 A. No.</p> <p>20 Q. You didn't want me writing any</p> <p>21 more letters concerning your conduct at the</p> <p>22 Brooklyn TVB; am I right?</p> <p>23 A. No.</p> <p>24 Q. You did not want me writing any</p> <p>25 more letters; is that true?</p>	<p>1 ALAN GELBSTEIN</p> <p>2 weekly basis or in your office fairly</p> <p>3 often; is that fair to say?</p> <p>4 A. No.</p> <p>5 Q. For what reason are they in</p> <p>6 your office?</p> <p>7 MR. THOMPSON: Objection to</p> <p>8 form.</p> <p>9 A. They may have had a question or</p> <p>10 maybe I called them in because there was a</p> <p>11 time where they were all permitted and then</p> <p>12 there was a time when they weren't</p> <p>13 permitted. Once they were not permitted,</p> <p>14 no ticket brokers that I was able to catch</p> <p>15 as it were, were permitted in the premises.</p> <p>16 Q. Now, what point in time --</p> <p>17 didn't you tell me that these ticket</p> <p>18 brokers that are in your office on a</p> <p>19 habitual basis, that they're friends of</p> <p>20 your wife and I have dinner with them, but</p> <p>21 I don't know what they do for a living.</p> <p>22 Did you not tell me that at one</p> <p>23 point?</p> <p>24 A. No.</p> <p>25 Q. Were you in the GE pleading</p>

21 (Pages 81 to 84)

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<p style="text-align: right;">Page 85</p> <p>1 ALAN GELBSTEIN</p> <p>2 motorists guilty on a sidebar and</p> <p>3 rescheduling case on a sidebar before ALJ</p> <p>4 Gelbstein?</p> <p>5 MR. THOMPSON: Objection to the</p> <p>6 form of the question.</p> <p>7 Q. Did you ever plead motorists</p> <p>8 guilty at the Brooklyn TVB before ALJ</p> <p>9 Bohmstein, B-O-H-M-S-T-E-I-N, did you ever</p> <p>10 enter guilty pleas on before of motorists?</p> <p>11 A. Ever?</p> <p>12 Q. In the GE?</p> <p>13 A. I'm sure I did.</p> <p>14 Q. For what reason?</p> <p>15 A. For various reasons.</p> <p>16 Q. For what reason?</p> <p>17 MR. THOMPSON: Objection, asked</p> <p>18 and answered.</p> <p>19 Q. Are you acting as a lawyer, did</p> <p>20 you have your own caseload?</p> <p>21 A. No, I did not. I mean, I had</p> <p>22 cases when there were occasions when I</p> <p>23 covered rooms, yes.</p> <p>24 Q. No, did you have individual</p> <p>25 clients that you were representing down at</p>	<p style="text-align: right;">Page 87</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. You didn't give him cases for</p> <p>3 him to handle?</p> <p>4 A. I might have asked him to</p> <p>5 handle a case if another attorney calls in</p> <p>6 the office and says I can't make it and</p> <p>7 he's not -- I wouldn't grand him another</p> <p>8 adjournment and he says, "could you give it</p> <p>9 to somebody," I probably would do that.</p> <p>10 Ask another attorney if they would want to</p> <p>11 handle another attorney's case.</p> <p>12 Q. When Eugene Gervazi tells me he</p> <p>13 is covering a case for Judge Gelbstein,</p> <p>14 he's covering one of your cases, is that</p> <p>15 what he's doing?</p> <p>16 A. No --</p> <p>17 MR. THOMPSON: Objection to the</p> <p>18 form of the question.</p> <p>19 A. No, I don't have cases.</p> <p>20 Q. There was a lady called Tanya</p> <p>21 Rabinowitz down at the Brooklyn TVB that</p> <p>22 was calling herself a lawyer on a repeated</p> <p>23 basis.</p> <p>24 Was she removed from the</p> <p>25 Brooklyn TVB at some point?</p>
<p style="text-align: right;">Page 86</p> <p>1 ALAN GELBSTEIN</p> <p>2 the Brooklyn TVB?</p> <p>3 A. No, I never represented a</p> <p>4 client in the TVB.</p> <p>5 Q. But, you were pleading clients</p> <p>6 guilty in the general requirements room; is</p> <p>7 that fair?</p> <p>8 A. No.</p> <p>9 Q. Did you ever reschedule</p> <p>10 clients' cases in the general requirements</p> <p>11 room?</p> <p>12 A. No.</p> <p>13 Q. Before Judge Bohmstein, you</p> <p>14 never did that?</p> <p>15 A. No.</p> <p>16 Q. Did you ever have Eugene</p> <p>17 Gervazi cover cases for you in the Brooklyn</p> <p>18 TVB?</p> <p>19 A. Did I ever have?</p> <p>20 Q. Eugene Gervazi, an attorney</p> <p>21 that works at the Brooklyn TVB as myself</p> <p>22 was doing cover cases for you?</p> <p>23 MR. THOMPSON: Objection to the</p> <p>24 form of question, you can answer.</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 88</p> <p>1 ALAN GELBSTEIN</p> <p>2 A. Yes.</p> <p>3 Q. At what point in time was she</p> <p>4 removed?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you recall calling the</p> <p>7 District Attorney and telling her -- and</p> <p>8 telling the District Attorney that we have</p> <p>9 a person down here calling herself a lawyer</p> <p>10 at Judge Gelbstein's courtroom, did you</p> <p>11 have any notification of that?</p> <p>12 A. Not that I recall.</p> <p>13 Q. And did you approach me at some</p> <p>14 point in time and tell me "who are you, Don</p> <p>15 Quixote," when you found out that I called</p> <p>16 District Attorney about Tanya Rabinowitz?</p> <p>17 A. I don't believe that is true.</p> <p>18 Q. You never said "who are you,</p> <p>19 Don Quixote"?</p> <p>20 MR. THOMPSON: Objection, asked</p> <p>21 and answered. You can respond.</p> <p>22 A. No, I don't believe I ever said</p> <p>23 that to you.</p> <p>24 Q. Do you believe you acted</p> <p>25 lawfully in having me removed from the</p>

22 (Pages 85 to 88)

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<p style="text-align: right;">Page 89</p> <p>1 ALAN GELBSTEIN</p> <p>2 Brooklyn TVB on May 11, 2015?</p> <p>3 MR. THOMPSON: Objection, calls</p> <p>4 for a legal conclusion. You can</p> <p>5 answer.</p> <p>6 A. I believe it was a lawful</p> <p>7 action.</p> <p>8 Q. Under what law, under what</p> <p>9 statute, under what authority did you make</p> <p>10 that decision?</p> <p>11 MR. THOMPSON: Same objection.</p> <p>12 A. I don't believe it was my</p> <p>13 decision.</p> <p>14 Q. Whose decision was it?</p> <p>15 A. I believe it was done in</p> <p>16 consultation with people above me.</p> <p>17 Q. But, you were personally</p> <p>18 involved in the removal; right?</p> <p>19 A. Yes, I was.</p> <p>20 Q. Can I ask that we go to</p> <p>21 Exhibit 12.</p> <p>22 (Whereupon, Plaintiff's Exhibit</p> <p>23 12, previously marked, was</p> <p>24 introduced.)</p> <p>25 Q. Are you familiar with that</p>	<p style="text-align: right;">Page 91</p> <p>1 ALAN GELBSTEIN</p> <p>2 did in response to it, is that fair?</p> <p>3 A. I don't recall the incident or</p> <p>4 what I did about it. What is the date of</p> <p>5 this letter?</p> <p>6 Q. May 14th.</p> <p>7 You don't recall it?</p> <p>8 A. What year?</p> <p>9 Q. 2014.</p> <p>10 A. I don't recall it.</p> <p>11 Q. In June of 2012 Defendant Smart</p> <p>12 approached me from the rear and pushed me</p> <p>13 in the rear attempting to get my cell</p> <p>14 phone. Pretty much he assaulted me.</p> <p>15 Do you recall that complaint to</p> <p>16 your office?</p> <p>17 MR. THOMPSON: I object to the</p> <p>18 form of the question, you can answer.</p> <p>19 A. I don't recall it.</p> <p>20 Q. You don't recall that one.</p> <p>21 You don't recall the incident</p> <p>22 of the spear hand and the sign of the</p> <p>23 cross. You don't recall this letter of</p> <p>24 complaint. You don't recall the theft that</p> <p>25 Defendant Smart made of \$80 on a \$150 fee.</p>
<p style="text-align: right;">Page 90</p> <p>1 ALAN GELBSTEIN</p> <p>2 letter of complaint that I submitted to</p> <p>3 your office?</p> <p>4 A. You submitted it?</p> <p>5 Q. Yeah, I did.</p> <p>6 It was produced by your</p> <p>7 attorney, attorney Thompson, are you</p> <p>8 familiar with it?</p> <p>9 A. No.</p> <p>10 Q. You're not.</p> <p>11 Did you take any action in</p> <p>12 response to that letter?</p> <p>13 A. I'm not sure what the letter</p> <p>14 is. Could I see the rest of the letter?</p> <p>15 (Whereupon, the Court Reporter</p> <p>16 scrolled down so the witness can see</p> <p>17 the rest of the exhibit.)</p> <p>18 Q. It's a complaint made about</p> <p>19 Defendant Smart that he gets in my face and</p> <p>20 tells me to "fuck you."</p> <p>21 You don't recall seeing that</p> <p>22 letter?</p> <p>23 A. I may have seen it, I honestly</p> <p>24 don't recall it.</p> <p>25 Q. And you don't recall what you</p>	<p style="text-align: right;">Page 92</p> <p>1 ALAN GELBSTEIN</p> <p>2 Is that fair?</p> <p>3 A. Yes, that's fair.</p> <p>4 MR. THOMPSON: Objection to the</p> <p>5 form of the question.</p> <p>6 Q. And you never reviewed the</p> <p>7 videotape of Defendant Smart approaching me</p> <p>8 on the morning of May 11, 2015; is that</p> <p>9 right?</p> <p>10 A. I don't recall if I did or not.</p> <p>11 Q. Why did you keep the evidence,</p> <p>12 why did you keep the videotape of the</p> <p>13 alleged push on Defendant Smart on the</p> <p>14 morning of May 11, 2015, why you didn't</p> <p>15 keep --</p> <p>16 MR. THOMPSON: Objection to the</p> <p>17 form of the question, you can answer.</p> <p>18 A. I was never instructed on the</p> <p>19 use of the machine. I believe it was a</p> <p>20 tape that goes around and around, you know,</p> <p>21 and re-records on itself. I would have no</p> <p>22 idea how to take a piece of it off, if it</p> <p>23 were to occur to me to want to take a piece</p> <p>24 of it off, I would not know how to do that.</p> <p>25 Q. Did you deliberately lose the</p>

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<p style="text-align: right;">Page 93</p> <p>1 ALAN GELBSTEIN</p> <p>2 evidence, Judge Gelbstein?</p> <p>3 A. No.</p> <p>4 MR. THOMPSON: Objection to the</p> <p>5 form.</p> <p>6 Q. Did you want to sweep this</p> <p>7 complaint under the rug by losing the</p> <p>8 evidence?</p> <p>9 MR. THOMPSON: Same objection.</p> <p>10 A. I didn't lose any evidence.</p> <p>11 Q. But you didn't keep or maintain</p> <p>12 the evidence; right?</p> <p>13 MR. THOMPSON: Same objection.</p> <p>14 A. I kept any evidence that was</p> <p>15 presented to me.</p> <p>16 Q. But you didn't keep the</p> <p>17 videotape now, did you?</p> <p>18 MR. THOMPSON: Objection.</p> <p>19 A. It wasn't in my direct control</p> <p>20 and it didn't occur to me until you brought</p> <p>21 it up that it's evidence one way or the</p> <p>22 other what regard to this case.</p> <p>23 Q. That evidence would have shown</p> <p>24 who provoked that incident, would that be</p> <p>25 fair to say?</p>	<p style="text-align: right;">Page 95</p> <p>1 ALAN GELBSTEIN</p> <p>2 A. Ultimately it was I guess under</p> <p>3 my control, but I had no direct supervision</p> <p>4 and never did.</p> <p>5 Q. Who recommended that security</p> <p>6 cameras be put up in the Brooklyn TVB,</p> <p>7 whose recommendation was that?</p> <p>8 MR. THOMPSON: Objection to the</p> <p>9 form, you can answer.</p> <p>10 A. It was based on an audit by the</p> <p>11 auditors of the DMV. They had recommended</p> <p>12 it or it would have been our security</p> <p>13 people that recommended it, I don't know.</p> <p>14 One of those two field investigations might</p> <p>15 have done it or the regular audit people</p> <p>16 might have done it as part of an audit, one</p> <p>17 of those two.</p> <p>18 Q. And you don't know how long</p> <p>19 that videotape lasts; is that right?</p> <p>20 A. No, I don't.</p> <p>21 MR. THOMPSON: While we're at a</p> <p>22 bit of a pause, I would just say it's</p> <p>23 12:07 right now, Ms. Traschen has</p> <p>24 been waiting by her computer since</p> <p>25 11:45.</p>
<p style="text-align: right;">Page 94</p> <p>1 ALAN GELBSTEIN</p> <p>2 MR. THOMPSON: Objection.</p> <p>3 A. I would say that it would show</p> <p>4 conclusively what occurred.</p> <p>5 Q. And you made the decision not</p> <p>6 to keep it.</p> <p>7 Who's in control of the</p> <p>8 videotape at the Brooklyn TVB?</p> <p>9 MR. THOMPSON: Objection to the</p> <p>10 form.</p> <p>11 A. I beg your pardon?</p> <p>12 Q. Who's in control of the</p> <p>13 videotape at the Brooklyn TVB?</p> <p>14 A. It was in the clerical office.</p> <p>15 Q. Who's in control of it, who's</p> <p>16 the person in control of it?</p> <p>17 A. I don't know which clerk or</p> <p>18 supervisor was directly responsible for</p> <p>19 its recording. I believe there was some</p> <p>20 kind of protocol, but I don't know what it</p> <p>21 was.</p> <p>22 Q. You had no control of the</p> <p>23 videotape from the Brooklyn TVB?</p> <p>24 MR. THOMPSON: Objection to the</p> <p>25 form of the question, you can answer.</p>	<p style="text-align: right;">Page 96</p> <p>1 ALAN GELBSTEIN</p> <p>2 Do you intend to go forward</p> <p>3 with her deposition Mr. Capogrosso?</p> <p>4 MR. CAPOGROSSO: Just give me</p> <p>5 -- because we had problems. I'll ask</p> <p>6 for eight more minutes and then I</p> <p>7 will stop. In eight more minutes I</p> <p>8 will stop.</p> <p>9 MR. THOMPSON: All right, I'll</p> <p>10 let her know.</p> <p>11 MR. CAPOGROSSO: And I'll do</p> <p>12 everything to keep to my schedule and</p> <p>13 I will. Just give me eight more</p> <p>14 minutes and I will stop precisely at</p> <p>15 12:15.</p> <p>16 Can we go to Exhibit 66.</p> <p>17 (Whereupon, Plaintiff's Exhibit</p> <p>18 66, previously marked, was</p> <p>19 introduced.)</p> <p>20 Q. Now, are you familiar with this</p> <p>21 document?</p> <p>22 A. I only see that it was</p> <p>23 addressed to me, so I don't know.</p> <p>24 Q. You do note the big blackout</p> <p>25 spaces in the document; am I right?</p>

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<p style="text-align: right;">Page 97</p> <p>1 ALAN GELBSTEIN</p> <p>2 A. Yes, I see that.</p> <p>3 Q. Was that redacted footage of</p> <p>4 the alleged incident between myself and</p> <p>5 Smart; do you know?</p> <p>6 A. I have no idea what is</p> <p>7 redacted.</p> <p>8 Q. Was that information</p> <p>9 purposefully redacted?</p> <p>10 A. I have no way of knowing.</p> <p>11 Q. Do those blackouts show the</p> <p>12 alleged incident between myself and</p> <p>13 Defendant Smart?</p> <p>14 A. I have no way of knowing.</p> <p>15 Q. When you worked at the</p> <p>16 administrative law judge, you were a state</p> <p>17 agent; is that fair?</p> <p>18 MR. THOMPSON: Objection, calls</p> <p>19 for a legal conclusion.</p> <p>20 Q. Were you operating under color</p> <p>21 of state law?</p> <p>22 MR. THOMPSON: Same objection.</p> <p>23 A. Repeat the question?</p> <p>24 Q. Were you operating under color</p> <p>25 of state law, under the direction of state</p>	<p style="text-align: right;">Page 99</p> <p>1 ALAN GELBSTEIN</p> <p>2 Q. I wasn't given any due process</p> <p>3 was I, is that a fair statement?</p> <p>4 MR. THOMPSON: Objection to the</p> <p>5 form of the question. It calls for a</p> <p>6 legal conclusion.</p> <p>7 Q. What is a due process, you're a</p> <p>8 Judge, what is due process?</p> <p>9 MR. THOMPSON: Same objection.</p> <p>10 THE WITNESS: I can answer</p> <p>11 that.</p> <p>12 MR. THOMPSON: Subject to the</p> <p>13 objection, yes.</p> <p>14 A. Due process is giving somebody</p> <p>15 an opportunity to respond to a complaint I</p> <p>16 would think.</p> <p>17 Q. And you gave me no such</p> <p>18 opportunity, did you?</p> <p>19 A. I did.</p> <p>20 Q. Explain how you did?</p> <p>21 A. You could have given me an</p> <p>22 affidavit. In all our conversations that</p> <p>23 you and I have had, I gave you information</p> <p>24 that I was given by countless people with</p> <p>25 regard to singular incidents and you gave</p>
<p style="text-align: right;">Page 98</p> <p>1 ALAN GELBSTEIN</p> <p>2 law?</p> <p>3 A. I believe so.</p> <p>4 Q. You indicated you had</p> <p>5 supervisory authority over the actions of</p> <p>6 Defendant Smart; is that right?</p> <p>7 A. Yes.</p> <p>8 MR. THOMPSON: Objection to the</p> <p>9 form of the question.</p> <p>10 A. Yes.</p> <p>11 Q. And you had the ability to have</p> <p>12 me removed from the Brooklyn TBV; is that</p> <p>13 right?</p> <p>14 A. I'm not sure if I did or not.</p> <p>15 Q. But, you did have me removed</p> <p>16 from the Brooklyn TVB; right?</p> <p>17 A. Oh, I'm sorry did you say</p> <p>18 removed David Smart or removed you?</p> <p>19 Q. Removed me from the Brooklyn</p> <p>20 TVB because that's what you did, am I</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 MR. CAPOGROSSO: I have three</p> <p>24 more minutes. Let me see if I'm</p> <p>25 missing anything.</p>	<p style="text-align: right;">Page 100</p> <p>1 ALAN GELBSTEIN</p> <p>2 me your version of the story.</p> <p>3 And because of the great volume</p> <p>4 of witnesses who reported to me, I found</p> <p>5 their story more credible than I found your</p> <p>6 story on any one of the occasions that</p> <p>7 occurred.</p> <p>8 Q. You illicit the affidavits of</p> <p>9 other attorneys, did you not?</p> <p>10 MR. THOMPSON: Objection to the</p> <p>11 form, you can answer.</p> <p>12 A. No.</p> <p>13 Q. Did you illicit affidavits of</p> <p>14 other attorneys?</p> <p>15 A. No.</p> <p>16 Q. You did not; not of Jeff Myer</p> <p>17 err, Yakov Brody, you did not illicit their</p> <p>18 affidavits?</p> <p>19 MR. THOMPSON: Objection, asked</p> <p>20 and answered.</p> <p>21 A. I don't recall if I ever asked</p> <p>22 anybody for an affidavit.</p> <p>23 Q. I was never presented with the</p> <p>24 affidavits or the complaints against me and</p> <p>25 my office at the Brooklyn TVB by your</p>

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ALAN GELBSTEIN
CERTIFICATE

STATE OF NEW YORK)
: SS.:
COUNTY OF KINGS)

I, JAMIE NEWMAN, a Notary Public for
and within the State of New York, do hereby
certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not
related to any of the parties to this
action by blood or by marriage and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 31st day of December 2020.


JAMIE NEWMAN

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